HAZARD COMMUNICATION STANDARD AND ITS IMPACT ON SMALL BUSINESS NONMANUFACTURERS

HEARING

BEFORE THE

SUBCOMMITTEE ON EXPORTS, TOURISM, AND SPECIAL PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

WASHINGTON, DC, SEPTEMBER 28, 1988

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HAZARD COMMUNICATION STANDARD AND ITS IMPACT ON SMALL BUSINESS NONMANUFACTURERS

WEDNESDAY, SEPTEMBER 28, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EXPORTS, TOURISM,
AND SPECIAL PROBLEMS,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2359-A, Rayburn House Office Building, Hon. Norman Sisisky (chairman of the subcommittee) presiding.

Present: Chairman Sisisky; Representatives Lancaster, and Ireland.

Chairman SISISKY. Good morning. The subcommittee will come to order.

I want to welcome everyone to the hearing this morning. Today's hearing considers the Occupational Safety and Health Administration's Hazard Communication Standard and its impact on small business nonmanufacturers.

We will explore the problems small businesses are having in complying with this standard and hopefully arrive at some recommendations and solutions to make compliance easier.

Before we begin, I would like to take this time to thank my colleagues on this subcommittee for their participation in this hearing, especially the ranking minority member, Mr. Ireland, and to also extend my gratitude to the distinguished panels of witnesses who will testify in a few moments.

The Hazard Communication Standard regulates how employers and employees handle hazardous chemicals so that health and safety risks are limited in the workplace. With approximately 575,000 different chemical products in existence, millions of employees are exposed to chemicals daily and some of them are classified as hazardous, meaning that such chemicals can cause serious illnesses and injuries when employees are improperly exposed to them.

The purpose of this hearing is not to examine the various provisions of the standard. That is within the jurisdiction of the Education and Labor Committee. Our objective is to discuss the problems small business nonmanufacturers are having in complying with this standard and to protect their employees.

I would like to take a brief few moments to give a brief history of the standard, knowing that some of our witnesses will give more

details in their testimony. In 1983, OSHA promulgated a Hazard Communication Standard that applied to manufacturers and importers of chemicals. The purpose of that standard was to inform employees of the hazardous chemicals that they may come in contact with and the protective measures necessary to avoid health and safety risks.

This standard was later expanded in 1987 to apply to nonmanufacturers. It was believed that employees of nonmanufacturers were also exposed to some hazardous chemicals. Now, what the standard requires is that chemicals manufactured, imported, or used in the work place be evaluated for possible health and safety risks. The result of these evaluations must then be transmitted to employees by hazard communication program through labeling containers, transmitting material safety data sheets, and employee training.

As of this month, there is active court litigation regarding this standard and the certain provisions that expanded it in 1987 to apply to nonmanufacturers. We are not here today to litigate those issues, but to allow small business nonmanufacturers to state the problems that they are having in trying to comply with the standard.

Although it is possible that certain provisions may change due to the litigation, the fact still remains that there will be a standard and that small business nonmanufacturers will be required to comply with it.

Therefore, I believe this hearing is very timely. Our objective is to allow small businesses to raise the problems that they are having in trying to comply with the standard and to arrive at some recommendations and solutions to their problems.

It is also our objective to determine what Federal programs are available or should be available to assist small businesses. Small business nonmanufacturers have repeatedly stated to us that they believe that there should be a standard applied to them to protect their employees from hazardous chemicals. However, they have also stated that this standard is too complex, confusing, burdensome, and costly. Small businesses will explain this in more detail in their testimony.

We are fortunate to have witnesses representing OSHA, SBA, AFL–CIO, and various types of small business nonmanufacturers. Some of these witnesses are responsible for either implementing the standard or complying with it on a daily basis.

We have asked the panels of small businesses to first state the problems that they are having in trying to comply with the standard and also offer their suggestions on how to resolve these problems.

The panels which follow will then offer their recommendations and solutions to the problems that the small businesses have raised. We will also explore various Federal programs that are available or should be available to assist small business nonmanufacturers.

We believe that the witnesses that we have will provide valuable insights. Their testimony will help us reach the objectives that we have set. Thank you.

Mr. Ireland, do you have any statement?

Mr. IRELAND. Thank you, Mr. Chairman.

There is one thing that I would like to have the subcommittee have in mind as we hear this testimony. Some 8 years ago, after 4 years of work we passed the Regulatory Flexibility Act, of which the key provision is each agency of the Federal Government will take into account, as they produce rules and regulations, the effect on small business.

As we listen to the reports of compliance and the difficulties of compliance, I would be interested in having us pay attention to whether this agency that produced these rules complied in proper order with the Regulatory Flexibility Act and if they didn't, why not? Thank you.

Chairman SISISKY. Thank you. Any other comments from any members?

I would like to, with unanimous consent, ask that an opening statement of Congressman James H. Bilbray be put in the record at this time. Without objection, so ordered.

[Mr. Bilbray's statement may be found in the appendix.]

Chairman SISISKY. Our first panel will represent the American Subcontractors Association, the Associated Builders and Contractors, and the National Association of Home Builders, Mr. Thomas J. Godwin, Jr., president of D&G Electric, in Birmingham, AL. Representing the Society of American Florists, Mr. Norman T. White, president of White's Nursery and Greenhouses, Inc., in my district, in Chesapeake, VA; and Mr. Larry Olin is here from the National Wholesale Druggists Association. He is president of Humiston-Keeling, Inc., Chicago, IL; and representing the National Association of Wholesaler-Distributors, Mark H. Freedman, president of Cooper-Lewis, Inc., of Providence, RI.

We welcome you here this morning. We are delighted that you are here and you may start your testimony now. We will hold off any questions until all of the panel finishes their testimony.

Mr. Godwin, since I called you first, please proceed.

TESTIMONY OF THOMAS J. GODWIN, JR., PRESIDENT, D&G ELECTRIC CO., REPRESENTING AMERICAN SUBCONTRACTORS ASSOCIATION, ASSOCIATED BUILDERS AND CONTRACTORS, AND NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. GODWIN. Thank you, Mr. Chairman. Members of the subcommittee, my name is Thomas Godwin, and I am president of D&G Electric Co., a family-owned electrical contracting firm in Birmingham, AL.

Today I represent the American Subcontractors Association, the Associated Builders and Contractors and the National Association of Home Builders. Together, these three organizations represent nearly 200,000 of the Nation's commercial, industrial, and residential construction companies. Over 90 percent of these firms are small businesses.

First, let me say that none of these organizations I represent today are opposed to hazard communication. However, we do have serious problems with the way certain provisions of the OSHA Hazard Communication Standard are proposed to be applied to the construction industry.

We also have serious problems with the lack of assistance and guidance which OSHA has provided to our industry, as well as others. To put it bluntly, Mr. Chairman, the current standard won't work in the construction industry.

It won't work because it will not accomplish what OSHA employers and employees want it to do. It will not reduce the risk of injury caused by chemical health hazards on construction sites. It won't work because OSHA's scientists have written a vague, confusing, and cumbersome standard which OSHA officials themselves have trouble explaining and which makes very little sense to the average construction contractor who attempts to comply.

I use the word attempts because no one knows for sure what compliance really means. OSHA has made little effort to inform employers directly of their responsibility under the standard.

The Hazard Communication Standard is the most far-reaching and broad-based rule OSHA has ever issued. OSHA considers it to be the cornerstone of its mission in the work place, yet the agency seems to be keeping it a secret from those it affects.

The way it is right now, an employer will probably first hear about the standard when an OSHA inspector asks him to produce compliance information. It is downright crazy that a Federal agency can issue a single regulation affecting 4.5 million businesses employing 59 million people and have no system to inform employers.

I think employers like me have a right to expect more than a simple notice in the Federal Register. If we are going to protect the health and safety of the American work force, don't we have a right to know what we are supposed to do? How can the Government justify handing out $10,000 fines when it makes no efforts to tell me about the standard?

When we had to comply with the new immigration law last year, the INS mounted an education campaign. It took out ads in newspapers, produced videos, and sent information to every employer in the Nation. That was to make sure we filled out one form.

OSHA is requiring me to write a company hazard communication program, collect material safety data sheets on all hazardous products, make sure the products are labeled correctly and then train all of my employees. Where are the ads? Where is the toll-free number? Where is the educational assistance?

OSHA will tell you that they are working diligently with trade associations to get the word out to the businesses. It is just not enough.

Many associations are not up to speed on this standard and the ones that are get conflicting signals from OSHA. What is worse, more than half of all construction employers don't belong to associations. They have absolutely no idea what is going on, and that is what is of grave concern to those of us who are educated. Why? Under this standard, construction contractors are responsible for educating and training their employees about the substances they are working with.

In addition, we must train our employees about the hazards other contractors are exposing them to. We must exchange material safety data sheets [MSDS's] with other contractors. We must provide information to our employees about labeling, protective

gear, and emergency situations while working around other contractors.

This sounds admirable; it may even sound desirable, but the way the rule is written demonstrates just how little OSHA really knows about the real world of construction.

As an electrical contractor, my employees can come into contact with 10 to 20 other contractors on any given job. This may include masonry, drywall, plumbing, mechanical, and painting contractors, just to name a few. None of us starts or finishes a job on the same day and employees are coming and going at all times during the project.

Multiply that number by other contractors on the job site with me, by the dozen or more jobs I am working on at any one time. Where and how is the exchange of information going to take place? Who is going to teach me how to explain the chemical hazards of a paint to my employees? Where are these MSDS's going to be kept? Who is responsible for coordinating this exchange on the work site? No one has an answer for me, least of all OSHA.

OSHA officials think we are overreacting to the situation, but in developing this standard for the nonmanufacturing sector, OSHA estimated that as a specialty contractor, I would have an average of 12 hazardous substances and would spend a mere $169 the first year of my compliance.

Mr. Chairman, $169 won't even cover the cost of Xeroxing all the MSDS's I have received so far.

That brings me to the types and numbers of substances covered by this standard. In construction, it is not just things like carbon monoxide and lead. This standard covers any product which has material safety data sheets.

This means I must train my employees not drink the copier toner in my Xerox machine. I must train my employees not to use hand cleaner because it may give them dry skin. I must train my employees not to eat wallpaper because it gives them constipation.

This sounds comical, Mr. Chairman, but this is what the standard requires of employers.

These MSDS's are not simple documents, either. They are technical, complicated documents which can run up to 15 pages. They are written by and for scientists and health professionals, not the average small business person.

Under this standard, I am supposed to know what products are covered when I get an MSDS from my supplier. OSHA has guaranteed this in the standard. Unfortunately, my suppliers have been left in the dark by OSHA. Only the larger are aware of their responsibilities to the user of the product and some of them have been selective in providing MSDS's to customers.

Suppliers often complain they can't get an MSDS from the manufacturer who is responsible for creating it in the first place. There simply is no enforcement mechanism to make sure that the end user of the product is going to get the information he needs to be in compliance with the standard.

When we do get the MSDS's, they are often too long or complex to be useful. Because of the lack of guidance from OSHA, manufacturers are putting anything and everything on these MSDS's. I am supposed to get my training information from the MSDS, but who

is going to explain to me the meaning of evaporation rate, vapor pressure, permissible exposure limit?

People think that training consists of a simple warning to employees about what they are working with. That is simply not the truth. Under this standard, I must train my employees about the physical and health hazards of the product. I must train them how to spot the hazard and what protective gear they need. I must train them what to do in an emergency and I must prepare and train them about my company's written hazard communication program.

This wouldn't be that hard if I only had the 12 hazardous substances OSHA said I should have, but so far, I have over 100 MSDS's, and that comes short in comparison to other contractors I know who have many times that number.

The system devised by OSHA threatens to create a liability timebomb for the unsuspecting small business person. Because OSHA hasn't informed us of our responsibilities, when an employer receives an MSDS from a supplier and fails to train on that product or does it incorrectly, that small business person opens himself up to a liability lawsuit from an employee.

Another problem is the instability of the construction work force. Construction has an annual turnover rate of 220 percent. We often hire people for one project or for only a few days. Since OSHA doesn't allow employees to become certified in training, each employer has to train an employee every time he works for a new contractor. We will wind up training several times a week for hours on end.

I also want to warn you about a whole new business which OSHA has indirectly created. It is called hazard communication consulting. There are numerous fly-by-night consultants popping up all over the country. They are trying to cash in on the confusion OSHA has created. They are preying on the fears of small businesses.

These consultants are offering compliance programs running into the thousands of dollars. Very often, these programs don't even meet the most basic requirements of the standard.

There are some very good private consultants out there, but the small business person has no way of knowing the good from the bad. Again, OSHA is not helping out.

Two weeks ago, OSHA finally announced that it had developed a compliance assistance package for employers. This came nearly a year after it was ordered to do so by the Office of Management and Budget. But the only way you know it is available is if you receive the Department of Labor's press release. In fact, you can't buy OSHA's compliance assistance package in any Government bookstore. You must order it over the telephone and then wait 6 to 8 weeks for delivery.

Mr. Chairman, I doubt that any OSHA inspector would accept the excuse of "My compliance program is in the mail."

Let me once again emphasize that we are not arguing against hazard communication. What we are saying is hazardous communication will only work if there is planning, education, and reasonable application to the industry affected.

Will OSHA inform all employees through the mail and the media? Will OSHA establish a toll-free hotline to answer compli-

ance questions? Will OSHA recognize how different industries operate? Will OSHA develop and enforce a standard system of material safety data sheets on legitimate hazardous products? Will OSHA conduct an outreach program to the millions of small businesses who have been left in the dark?

Without answers to these problems, the Hazard Communication Standard will not protect workers and it will crush many small businesses. OSHA owes answers to the American work force and to the small business community. Thank you, Mr. Chairman.

[Mr. Godwin's statement may be found in the appendix.]

Chairman SISISKY. Thank you, Mr. Godwin. I certainly appreciate your testimony, as I am sure the rest of the committee. Again, we will hold our questions until the entire panel is through.

Now, Mr. White, may I welcome you here to Washington, DC from Chesapeake, VA, where I reside. It is a pleasure to have you here, sir.

TESTIMONY OF NORMAN T. WHITE, PRESIDENT, WHITE'S NURSERY AND GREENHOUSES, INC., REPRESENTING SOCIETY OF AMERICAN FLORISTS; ACCOMPANIED BY NANCY MONTGOMERY

Mr. WHITE. Thank you, Congressman.

My name is Norm White and I am a commercial flower grower from Chesapeake, VA. I appreciate the opportunity to appear before this congressional subcommittee this morning to testify on behalf of the Society of American Florists.

The Society of American Florists is a trade association which represents the entire floral industry, growers, wholesalers, and retailers. I sit on the board of SAF and I also serve on the Government Relations Committee.

I am here today to talk to you about the floral industry's concern regarding how to comply with OSHA's Hazard Communication Standard. This standard requires employers to train employees on the chemicals they come in contact with in the workplace. This is a subject that concerns me a great deal personally because I have more than 50 employees in my company, including 3 members of my immediate family.

I want to assure you that I want my employees and my family to be able to protect themselves from exposure to anything that would be dangerous or harmful to their health.

My company is progressive and growing. In fact, in April of this year, we hired a new employee to work solely on public relations and advertising. However, because of the urgency for our company to comply with OSHA's Hazard Communication Standard and because of her educational science background and industry experience, I asked my new employee to get my operation in compliance with the standard.

This has been much more difficult than we expected. To date, we have spent more than 300 man-hours working solely on this requirement. Needless to say, my public relations and advertising projects had to be put on hold.

To be honest with you, we still have no way of knowing whether or not we are in compliance as OSHA expects.

On September 20, 1988, we were visited by OSHA, who were checking on our compliance with the standard. They asked for our chemical inventory list, a copy of our written hazard communications and the MSDS's. We were able to provide all of these things, yet despite all of our best efforts, I still don't know if I am in compliance.

We were told that if there were blank spaces in an MSDS, this should be taken as a signal to us that we do not have the most recent one.

Also, we were told that the standard requires us to have an eyewash fountain on the premises because some of the MSDS's state that if a chemical gets in your eye, then you must flush the eye for at least 15 minutes.

I was really shocked by this because I make sure water is available for emergency washing all over the premises: at the end of each greenhouse bench, in the fertilizer fixing area, in the pesticide mixing area. In fact, this whole thing has been so time-consuming, confusing, and stressful to us.

I would like to turn the microphone over to Nancy Montgomery, my public relations and advertising director, now acting safety director. I would like for her to describe to you just some of the many problems we have encountered trying to get our company in compliance. Thank you.

TESTIMONY OF NANCY MONTGOMERY

Ms. MONTGOMERY. Mr. Chairman, members of the subcommittee, before I get into the problems we have encountered on how to comply, I would like to begin by stating that it has been extremely difficult simply to obtain the information required by regulation. For example, as required, I took an inventory of all our chemicals used on the property, which include some 68. By the way, OSHA's estimate for the average number of chemicals on site for our industry was between 18 and 37.

Obtaining material safety data sheets for our chemical inventory was one of the most difficult parts of compliance because our distributors told me it was the manufacturer's responsibility and I must contact each manufacturer individually and request the MSDS.

After repeated communication, one supplier did send me an MSDS. It is a 300-page stack representing all MSDS's in his inventory, the majority of which we did not even use.

While sifting through the stack and comparing a few of these data sheets with ones from another source, I noticed there were two different dates on what appeared to be the same MSDS for the same chemical, so I decided in this case to call the manufacturer listed on that sheet to question.

To make a long story short, four phone calls and 2½ hours later, I learned there was a more recent MSDS superseding the other two I already had received for the same fungicide.

My question is how am I supposed to know whether or not I am receiving the most recent MSDS when we request them from the supplier?

The next problem I encountered after I obtained the MSDS's was the actual training on how to read these sheets. They tend to be somewhat complicated and the standard requires us to train about every physical and health hazard listed on the sheet.

Training about flashpoints and specific density are so unusual and remote to our daily working application, the employees tune out what I am saying. Many products had MSDS's that say that the product is not hazardous if used in accordance with the manufacturer's instructions. It seems ironic to me that in many instances the MSDS does not the state the proper personal protective equipment that has to be used with the chemical.

In our industry, that means that we go back and read the label, which already does this for us. Pesticide labels are carefully detailed and the Environmental Protection Agency requires certain things, like warnings and directions for use, to be on that label. In fact, it is a criminal offense to use the product in any manner that is inconsistent with labeling.

I guess I question why we have to keep the MSDS's when the label is where we look to find out what to wear, how to mix, apply, and handle specific pesticides. I can assure you, if there happens to be an emergency, the label is the most readily available place for us to look because it takes far too long to look it up on the MSDS and figure out what it says.

The label would serve ideally to transmit proper precautions and directions for safe handling and applying of pesticides and EPA has thought so for many years. The OSHA Hazard Communication Standard already requires that a label be on each chemical container and it is automatically sent with each chemical order. If this standard could revolve around a label program, rather than a separate data sheet, it would be a much more feasible standard.

Aside from the practical problems associated with the compliance, the regulation itself is so unclear and ambiguous we can't tell whether or not we are complying. We are not sure in some cases which chemicals are actually covered and we don't know which employees have to be trained because of a potential exposure. So what we are doing is training for every single chemical on the premises and training every single employee, even those who probably never will be exposed to any danger simply on the chance that it might happen.

Our industry is particularly concerned because we don't know when consumer use becomes industrial use. Even OSHA inspectors can't agree on what is covered and who must be trained. One Society of American Florists member in Maryland was told he had to train and warn for his employee's use of common household bleach twice a week for 15 minutes, while another inspector in another State said that the only chemicals she thought needed to be included were the pesticides used.

Now, if OSHA isn't sure what is covered, how are we supposed to be?

Another of our major concerns is whether or not we have to obtain the MSDS's from our suppliers of cut flowers which may have been treated with chemicals and may contain residues. We have asked this question of OSHA and have been given conflicting answers. Can you imagine the nightmare scenario if we are re-

quired to obtain 10 or 20 sheets with every stem of cut flower? Even one would create extreme hardships on our industry.

As you see, many of our flowers are imported, and under this standard, the importer would have to develop an MSDS and label. That would certainly be a nontariff barrier to trade.

We need a definitive answer to this problem and to many others. Under the standard, products containing hazardous materials are lumped together as though hazardous exposure would always be at its maximum. Products such as our industry uses are used intermittently and not as a constant part of the work day. For instance, it is reasonable for a person spray-painting automobiles 40 hours a week to observe many precautions now mandated, but it is far less reasonable to expect a floral designer, who is adding a touch of spray color to a wedding bouquet, to be trained of the same hazards and observe the same precautions.

There needs to be a workable distinction between constant exposure to significant dangers and occasional use of products containing hazardous materials.

Again, it has been difficult to get the information needed for compliance. We believe OSHA should bear some of the burden for training employers in the proper way to train our employees.

Not all of the businesses in our industry can afford to hire an additional employee to get them in compliance. There are many mom-and-pop small business owners in our industry and I know many of them have no idea that this law applies to their operation, much less how to go about getting into compliance.

Many businesses are owned and run by immigrants in our industry who barely speak English or by people who did not have the luxury of finishing high school. How will they comply with all of this? Cannot OSHA require all manufacturers to ship these MSDS's to a central data bank maintained by OSHA? At least we would know where to get the information. If OSHA could become the repository for all MSDS's in the United States, employers would have an easier time obtaining them.

Alternatively, this standard could be implemented and its goals met by using only the labels which accompany products. Employees can receive adequate warnings from labels and the standard does require all products to contain labels. If the paperwork burdens associated with the standard could be lessened and the warnings and training programs could be made less complicated, this standard would work and it would be a standard under which everyone could operate.

It makes good sense to be able to warn employees not to work without gloves because they may be exposed to chemicals which might cause allergic reactions. This does not require an MSDS which details every other known hazard for every conceivable misuse. It requires a label and someone who has read the label and can make sure that every employee has also read it and/or understands the dangers.

Worker safety is a socially important goal. It is also economically important. No thoughtful business person would jeopardize the health of any employee. However, there also ought to be an effective way to inform the work force about hazardous materials that does not generate vast quantities of essentially useless paper.

OSHA's efforts ought to be directed toward creating regulations which make cautionary information simple and direct. Thank you, Mr. Chairman.

[Mr. White's and Ms. Montgomery's statements may be found in the appendix.]

Chairman SISISKY. Thank you very much.

Now we will hear from Mr. Olin. We welcome you here, sir.

TESTIMONY OF LARRY OLIN, PRESIDENT, HUMISTON-KEELING, INC., REPRESENTING NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION

Mr. OLIN. Thank you, Mr. Chairman, and members of the subcommittee.

We appreciate the opportunity to discuss the problems the Hazard Communication Standard is presenting to our business located in Illinois. My name is Larry Olin. I am president of Humiston-Keeling, a privately held distributor of drugs and health care products. We have one distribution center. Out of that one distribution center, our 194 employees receive, inventory and distribute prescription and over-the-counter drugs, cosmetics, beauty aids, and home health care products to approximately 200 hospitals, 600 independent retail pharmacies and 240 chain pharmacies throughout Illinois, in parts of Michigan, Indiana, and Wisconsin.

Our inventory consists of more than 25,000 different products. Fifteen thousand of those products are prescription drug products. An additional 3,500 are over-the-counter drug products not requiring a prescription, but regulated by the FDA. The remaining 6,500 products consist of toiletries, sundries, durable medical equipment, and home health care products.

Over 75 percent of the products that we inventory and deliver to our pharmacy customers are regulated by the FDA. The packages that we receive, inventory, and fill orders are never opened.

The materials that we distribute to retail pharmacies, nursing homes, and hospital pharmacies are used in dispensing prescriptions and sold to consumers and patients. As with any medical product, precision, care, and safety are paramount. The personnel involved at our pharmacy customer facilities are highly trained professionals, people who know chemistry and the properties of the materials they handle. They are pharmacists.

We understand the purpose of the OSHA Hazard Communication Standard is to convey information on the hazards of chemicals to employees who are exposed to those chemicals and who are not otherwise getting this kind of information. We support this concept and meet the standard for chemicals used in maintaining our own facility.

As a wholesale distributor, we are trying to comply with all of the conditions and terms of the standard. It is our responsibility to first care for the well-being of our own employees. We have taken those steps.

It is also our responsibility to collect and solicit MSDS's from all of our suppliers of the 25,000 different products that we carry. We have taken that step. We have already received thousands of

MSDS's from pharmaceutical companies and companies that produce and manufacture over-the-counter health products.

We are in no position to second-guess the manufacturers of any product. If we receive an MSDS, we consider it our responsibility to have it available to our employees and, under the standard, to supply that same information to our customers. Our problem is that we are receiving MSDS's from manufacturers who are also attempting to comply with the standard and they are as confused as we are.

I would like to give an example of some products that I believe everybody in this room would be familiar. This is a letter from Procter & Gamble and I have here an MSDS for Pepto-Bismol. I would like to read from their letter:

> Pepto-Bismol liquid original and maximum-strength are hazardous within the meaning of the OSHA Hazard Communication Standard because the mixture, when tested as a whole, is a combustible; that is, flashpoint less than 200 degrees Fahrenheit, closed-cup method. The product has a DOT classification as follows: combustible liquid, not regulated in packages of less than 110 gallons. Pepto-Bismol liquids do not sustain combustion nor does it pose any significant fire hazard when used as intended.

Maybe there are some fire-eaters who drink Pepto-Bismol.

Our company serves over 1,000 pharmacy customers from our distribution facility. Virtually all of them must be sent full sets of each of the MSDS's we receive. If the standard is applied to FDA-regulated drugs, our business is liable to receive approximately 10,000 different MSDS's. Once received, we have to store them, index them, keep them up to date, and make a total of over 10 million copies and distribute those copies to our pharmacy customers. We would have to keep records, of course, to assure that this has been done and we would have to repeat the cycle for every new product or revised MSDS that comes in. I am afraid to even estimate what that cost would be.

What I look at instead is why I am supposed to be doing this. The basic purpose is to provide hazard information to employees who do not have it. The pharmacies with which we deal, however, are staffed by trained and certified professionals. Every pharmacy has multiple texts immediately available and in daily use which describe in far more detail than any MSDS the precise chemistry of each material and the hazards involved. Examples of these texts are the Physician's Desk Reference and Facts and Comparisons.

This PDR, as we refer to it, is available in virtually every pharmacy in our country. This is revised annually and is available at a cost of less than $25.

The National Wholesale Druggists' Association [NWDA], of which our company is a member, estimates the cost of distributing a single item, whether it is a bottle or a piece of paper, to be $1.54 per invoice line. Using this industry figure, our business alone would have to spend approximately $16 million to send out 10 million MSDS's to our 1,000 pharmacy customers.

It is our belief that that information to protect the employees of our customers is more readily available using established texts.

Thank you for this opportunity to voice our concerns.

[Mr. Olin's statement may be found in the appendix.]

Chairman SISISKY. I thank you, Mr. Olin.

I would ask the committee that your entire statement and all the entire statements be placed in the record. Without objection, so ordered.

Mr. Freedman, can we hear from you, sir?

TESTIMONY OF MARK H. FREEDMAN, PRESIDENT, COOPER-LEWIS, INC., REPRESENTING NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

Mr. FREEDMAN. Thank you very much, and good morning, Mr. Chairman, and members of the subcommittee.

I am Mark Freedman, president of Cooper-Lewis, Inc., a small automotive wholesaler-distributor with facilities in Providence, RI, and Lynn, MA.

Our 24 employees perform a multitude of tasks in the wholesaling operation of selling and servicing primarily automotive aftermarket accounts in five New England States with auto body paints, supplies, and equipment.

Cooper-Lewis is a member of the Automotive Service Industry Association, which is an affiliate of the National Association of Wholesaler-Distributors and it is on NAW's behalf that I appear today.

I have submitted for the record a prepared statement that addresses a number of HCS issues. However, this morning, I would like to focus on the one main difficulty I face with the HCS; that is, complying with my MSDS downstreaming obligations.

As a nonmanufacturing supplier of hazardous chemical products to commercial accounts, Cooper-Lewis is required to automatically provide an MSDS to its customers with the initial shipment of an HCS covered product and with the product's first shipment following an update.

This may sound like a simple enough task, but members of the subcommittee should consider this mandate in the context of the day-to-day operation of a small business.

Cooper-Lewis deals with about 200 suppliers and 1,000 customers on a regular basis. It carries some 12,000 part numbers in inventory and maintains on file at least 1,500 to 2,000 MSDS sheets. On a typical day, we will process in the neighborhood of 250 transactions, averaging 3 to 4 items per line invoice.

On a sale-by-sale basis, we determine if any item in the order is an HCS-covered product and, if so, if the shipment is an initial one to the customer. If it is, we locate the master MSDS, copy it and send it to the customer. From time to time, we discover that our supplier has failed to send us an MSDS. In these instances, we are obligated to obtain one immediately.

Of course, we must maintain an elaborate recordkeeping system to ensure that our MSDS obligations are being met correctly.

I would add parenthetically, Mr. Chairman, that there is no way for us to know if the chemical manufacturer has an updated MSDS on a product we sell if the chain of the MSDS transmittal is somehow broken between the chemical manufacturer and ourselves. As a result, my ability to obtain an updated MSDS is virtually nonexistent.

Recently, I requested a complete set of MSDS's to bring with me today from one of our manufacturer/suppliers. As I inspected our sheets on file, I found that they were from 1983. When I requested the information from the manufacturer, the manufacturer's legal interpretation was that updates were required on a per-request basis, even after the implementation of the HCS standard.

Mr. Chairman, to say that all of this increases our cost of doing business as a result of the cost associated with lost productivity is a big understatement. The cost that goes with simply reproducing MSDS's, and the lost productivity and personnel costs associated with having to keep adequate accurate records and sort out the irrelevant MSDS's we receive from suppliers makes compliance with the HCS an even greater burden.

It is a fantasy to believe that small business wholesaler-distributors like Cooper-Lewis can simply absorb these costs or, alternatively, pass them on and still remain competitive in the marketplace.

A more efficient, less-intrusive but still effective way of maintaining and downstreaming hazardous information that passes muster with the OSHA HCS must be found.

As chairman of ASIA's auto paint, body supply, and equipment division, I recently asked my divisional executive committee to work on developing an alternative. The result was an April 1988 interindustry meeting to explore this issue. All of the manufacturers who were invited to participate did so and all of them committed themselves to this project wholeheartedly.

Various suggestions were made at this meeting, but the one that generated the most enthusiastic response was to have MSDS's prepared on microfiche, which would drastically reduce the volume of paperwork generated by the HCS. The microfiche would be collected by a commercial vendor, which would reproduce and transmit the information to companies subscribing to this service. This clearinghouse concept has the potential to dramatically simplify the HCS compliance requirements.

Mr. Chairman, let me conclude by expressing my appreciation for the opportunity to testify on this subject before the subcommittee today. I will be happy to answer any questions that you may have. Thank you

[Mr. Freedman's statement may be found in the appendix.]

Chairman SISISKY. Thank you, and thank all of you.

To just let you know, this subcommittee, of course, is the Subcommittee on Export, Tourism, and Special Problems, so obviously we are working under the Special Problems. So I would like to open it up for questions and I would first ask my colleague, Mr. Ireland, if he has any questions?

Mr. IRELAND. Mr. Chairman, I am appalled at what we have heard. I grew up in Cincinnati and I never got the message from P&G about Pepto-Bismol, so I have been enlightened, at least from that standpoint.

Most of my questions as we go along are going to be directed toward the promulgation of the original regulations. I am struck by the fact that each one of the people who has testified indicated at the outset of their testimony that they are interested in complying; they are interested in the goal of their employees being safe in the workplace. They are also not interested in going out of business

while they do the Government's work and I think that we are seeing the real honest-to-goodness result of what appears to be a new wave of approach to things in Government and what the role of Government is as we place a greater and greater burden, not on the bureaucracy itself, but on our business world and professional world to carry out policy matters.

We have to find where that line is between what Government should do and what business should do, and even with the great cooperation indicated here, the Government apparently has fallen short of its responsibility.

One or two brief questions at this stage for the florist business in particular. I take it you are doing nothing in advertising and public relations—the entire thrust of what you have been doing is in the world of compliance.

Ms. MONTGOMERY. That is correct.

Mr. IRELAND. Mr. Freedman, is that happening in your business? What is the level of employment that you have either added or had to use in order to comply?

Mr. FREEDMAN. After reviewing the costs associated with having to put on an additional person on a full-time basis, I decided it was easier for me to try to maintain the records on my own. I do that after hours and on weekends. We looked at the costs associated and we figured it would cost us approximately $15,000 per year to put an additional person on staff just to maintain the recordkeeping.

Mr. IRELAND. Let me ask each of you—or maybe a number of you want to reply, but it would be interesting to see—what has your day-to-day contact been with the people from OSHA? Not any contacts you might have had with headquarters in Washington, so to speak, but the OSHA people on the street who you interface with? What kind of relationship is that? What do they say and how do they act?

Mr. OLIN. Congressman Ireland, in our particular case, the only dealings we have had so far is with the OSHA people themselves. We have had them to several of our association meetings and I'll quote what one of the OSHA inspectors said. We were starting a compliance course for the original May 23 implementation date and the local OSHA inspector said he was going to have to start fining and let the courts decide really what the standard means. He didn't have the understanding at that point of exactly what he was supposed to do. He felt like the courts would decide just exactly what would happen.

Mr. IRELAND. How about you, Mr. Freedman?

Mr. FREEDMAN. Prior to the OSHA implementation of the HCS, we were working in the States of Rhode Island and Massachusetts on a local basis with the Department of Labor and Department of Health. At that time, we worked very closely with both of those divisions regarding implementation of the laws. That was on a per-request basis back then.

We did have a lot of questions coming in from our accounts as far as how they get the MSDS's and the proper training procedures and things of that nature. That was prior to the Hazard Communication Standard being implemented in 1987 for our particular industry.

Since that time, we have not had very much contact with OSHA on a national level, but still through the State divisions.

Mr. IRELAND. How about you, Mr. White?

Mr. WHITE. Our association has been constantly in contact with OSHA and I am not that well-versed on exactly how much contact they have come in contact with OSHA.

Mr. IRELAND. Beyond your association, what about your own business?

Mr. WHITE. We have had very little contact with OSHA except for the one inspection we had just a few weeks ago.

Mr. IRELAND. That was out of the blue?

Mr. WHITE. It was sort out of a complaint of one of our employees—which they read in a trade magazine that we were supposed to be doing certain things. So they sent the complaint in. They didn't feel that we were handling it properly, so they came out to inspect. We did all the material in place except, as I mentioned, the eyewash that they said we were supposed to have, but we could not find in OSHA's regulations. As of yet, they have not come back and said anything.

Mr. IRELAND. Mr. Olin, how about you?

Mr. OLIN. We, as a company, instituted a management and employee training program, took both verbal and written instruction to all of our employees on what procedures are to be followed at the time of any breakage of any package in our warehouse.

We have installed an emergency shower and eyewash basin. We have had health care professionals train our management staff and supervisors on the proper use of the shower and eye wash basin and emergency health protocols. We have posted emergency phone numbers including: Ambulance service, a local hospital, and poison control center. We have special protective garments, gloves, masks, and special disposal containers in the case of any breakage or spillage.

As far as the distribution of MSDS's to our pharmacy customers, because of the OMB ruling, NWDA advised us that that was not clear and we were not required to distribute MSDS's to our pharmacy customers until there is further clarification.

Mr. IRELAND. Thank you, Mr. Chairman.

Chairman SISISKY. Before I call on my other colleagues, I would just like to make a statement. All of you are members of trade associations, but a vast majority of small business people, do not belong to trade associations where they can obtain information. I think it should be made clear that as you testify the information that you present really came from the associations, rather than just the information you picked up.

Mr. Lancaster?

Mr. LANCASTER. First of all, Mr. Chairman, I want to thank you for calling this mind-boggling problem to this subcommittee's attention. I was not aware that small businesses were being subjected to this kind of requirement and I want to commend each of the witnesses for very excellent testimony.

I don't have significant questions for you because I think the questions need to go to OSHA who will follow you. I do have one question, though, of each of you.

I know that some States have implemented hazardous notification programs ahead of OSHA. Are any of you operating in States which have State-mandated programs that require notification to employees? I will just start down the line with you, Mr. Godwin.

Mr. GODWIN. Alabama has none.

Mr. LANCASTER. That is the only State that you operate in?

Mr. GODWIN. Yes.

Mr. FREEDMAN. The two States I operate in do, but they are in line with the OSHA mandates now.

Mr. LANCASTER. They are not different in any way from the OSHA?

Mr. FREEDMAN. They were initially, but now they are following.

Mr. LANCASTER. If you could, tell us a little bit about whether the State programs worked and were less onerous than what you are facing now with the OSHA-imposed requirements.

Mr. FREEDMAN. I believe the initial program in Rhode Island was much more stringent, as was the one in Massachusetts. In both States we were given a list of hazardous chemicals. I believe there are 1,240 in Rhode Island and some 1,600 in Massachusetts. We were required to go through our inventory and determine which of the products we had contained any of these hazardous chemicals.

We would have to make up an alphabetical listing of the chemicals and the products in which they are contained and then do the reverse; alphabetically list the products with the chemicals therein contained.

This was approximately a 4-month project for two individuals. Since that time, they have been a little more relaxed in their ways in following the OSHA HCS standard.

Mr. LANCASTER. So from that experience, we don't learn anything that we might apply at the Federal level to make it a more reasonably enforceable standard or——

Mr. FREEDMAN. Except it was on a per-request basis.

Mr. LANCASTER How about you, Mr. White?

Mr. WHITE. To my knowledge, in Virginia, we have none.

Mr. LANCASTER. Have you heard from other florists or wholesalers of State programs that perhaps work better or maybe are worse?

Mr. WHITE. There is a program that Minnesota has that seems to be working.

Mr. LANCASTER. That is reasonable to apply and to use for your employees and customers?

Mr. WHITE. Except for the MSDS's. This is very, very time-consuming and confusing.

Mr. LANCASTER. Does Minnesota have the MSDS requirement in their own program?

Mr. WHITE. Yes; they do. That is correct.

Mr. LANCASTER. Mr. Olin?

Mr. OLIN. Our company is in compliance with the right-to-know laws of the State of Illinois, but they do not require the MSDS's or the distribution of MSDS's to customers.

Mr. LANCASTER. So the Illinois system is similar except for the distribution of the MSDS's?

Mr. OLIN. To my knowledge, it is.

Mr. LANCASTER. How has it worked through the years? Is it an old program?

Mr. OLIN. I am really not well-enough versed to answer that question.

Mr. LANCASTER. But was it working? Were you able to comply with the Illinois law without a substantial increase in employment or increased paperwork?

Mr. OLIN. Yes; we were.

Mr. LANCASTER. OK. Thank you, Mr. Chairman.

Chairman SISISKY. Thank you. I would also like to ask all of you to talk of your concerns about liability suits from employees. Somebody already mentioned they got inspected from a complaint.

Is there concern among small businesses about liability problems from their employees? As I understand it, this works from underneath the worker's compensation laws. Am I correct on that? Does anybody know?

Mr. GODWIN. Mr. Chairman, we are receiving MSDS's that carry a liability statement from the manufacturers that says they are not liable for the products, so that opens up a whole new line as far as we are concerned. If the courts got a hold of that, they could certainly do something with that statement.

Chairman SISISKY. OK.

Mr. OLIN. Mr. Chairman, it was our belief that it was of critical importance that every employee who was trained, certified, signed a statement that they had received the proper training about hazardous materials. Again, we were concerned with potential liability cases.

Chairman SISISKY. But, of course, if you leave out one MSDS and somebody gets—I would assume a liability problem.

Again, I do thank all of you this morning. I think you have clearly recorded the problems you are having. Again, I want the committee to understand that most of you represent trade associations, but there are vast numbers of small business people who do not know about this standard and need help.

Again, I do thank you for being here this morning. The committee will now hear from Ms. Margaret Seminario, who is associate director of the Department of Occupational Safety, Health and Social Security, of the AFL–CIO.

Welcome, Ms. Seminario. Welcome to the hearing and you may proceed with your testimony.

TESTIMONY OF MARGARET SEMINARIO, ASSOCIATE DIRECTOR, DEPARTMENT OF OCCUPATIONAL SAFETY, HEALTH AND SOCIAL SECURITY

Ms. SEMINARIO. Thank you very much, Mr. Chairman.

The AFL–CIO appreciates the opportunity to testify at this hearing on the OSHA Hazard Communication Standard and its application to small businesses.

We in our affiliated unions have been integrally involved in securing right-to-know protections for workers exposed to toxic chemicals on the job. Indeed, since the 1970's, the AFL–CIO pushed for a Federal standard on chemical hazard information and when Federal action was slow in coming, we worked with our State Fed-

erations of Labor to secure right-to-know protections at the State level.

We were a major participant in the OSHA rulemaking proceedings on the OSHA Hazard Communication Standard and we directly participated in the development of many of the State and local laws.

We successfully challenged inadequacies in OSHA's final standard and won expansion of the standard to all sectors and improvements in the trade secret provisions of the standard and we continue to be involved in other ongoing litigation on the standard.

For the past several years, we directed our efforts, as have employers, toward successful implementation of the standard. In 1987, we held a major national teleconference across the country at 20 sites to educate local union leaders and members about the standard and we developed a package of right-to-know training materials for our members.

My testimony today is based on this long experience with the development and the implementation of the OSHA Hazard Communication Standard and worker right-to-know protections.

The purpose of the OSHA standard and other right-to-know measures is to provide workers exposed to toxic chemicals on the job with information about the chemical's identity, its health and safety hazards and proper measures for control. Prior to the standard, this kind of information was often not provided by chemical manufacturers, leaving not only workers, but also employers in the dark about the hazards of these substances.

The OSHA standard puts the responsibility on chemical manufacturers to evaluate the chemicals they distribute in commerce and to provide chemical identity hazard and precautionary information to downstream users through a system of container labeling and material safety data sheets.

Employers who use the chemicals on the contrary must assure that the containers are labeled. They must maintain material safety data sheets in accessible locations, develop a list of hazardous chemicals in use and train workers on the hazards and safe use of the chemicals and requirements of the OSHA standard.

We believe that this division of responsibility between the chemical manufacturers and employers is appropriate. It does make sense that chemical manufacturers have the responsibility to evaluate the chemicals that they produce and to provide information about the hazards of these chemicals to downstream users. It makes sense that employers who use the chemicals be aware of their hazards and provide this information and training to their employees.

In our view, the OSHA standard is necessary and workable for large and small employers alike. Small employers who manufacture and distribute hazardous chemicals should have no less obligation than large chemical manufacturers to evaluate hazardous chemicals they produce and provide information on their hazards and safe-use practices. Whether the hazardous chemicals are distributed by a small firm or a multinational manufacturer, the same information is indeed needed by those who use the chemicals in the workplace.

All employers who use hazardous chemicals should similarly be capable of using their products in a safe manner. Employers have an obligation to assure the health and safety of their workers. They can't do so if they lack information or understanding about chemical hazards and appropriate control measures.

I just want to point out that the impact of the Hazard Communication Standard is indeed directly proportional to the hazardous chemicals that are used. If you don't use any hazardous chemicals, you have no legal responsibilities under this standard. If you use a lot of hazardous chemicals, then your responsibilities are proportionally increased.

We believe that the OSHA standard can provide required information on chemical hazards to both employers and workers and that all the standards information requirements, the labels, the safety data sheets and training, are necessary vehicles for the communication of hazard information.

The Material Safety Data Sheet, as you have heard this morning, is the primary means for transmitting chemical hazard information. These sheets contain information on the chemical's identity, its properties, safety and health hazards, emergency procedures, and precautions for a safe use. They are generally prepared by chemical manufacturers, though some employers do prepare their own. In addition, there are a number of private vendors who prepare and sell sheets for a fee and I might add that since the enactment of the Hazard Communication Standard Act and State laws, we have seen a blossoming in the private sector of service with respect to data sheets and training programs that have been developed.

The data sheets can vary widely in their quality. Some still provide grossly inadequate and incomplete and even misleading information. Others are very detailed and list the full range of hazards and underlying toxicological test data.

I realize that concerns have been raised by some in the small business community that the data sheets are too complex and that the data sheet requirements of the standard too burdensome. We don't agree. The data sheet, under the OSHA standard and right-to-know laws, is the most important source of information under the standard. They are the only source of the comprehensive information about the chemicals that are available to most employers.

Indeed, some of the forms can be lengthy and detailed. However, it has been our experience that with a basic understanding about Material Safety Data Sheet forms and the kinds of information provided, the key information on the forms can be picked out. This information can then be applied to the labeling and training provisions of the standard.

While we believe that the provisions of the OSHA standard are basically sound, we do believe and agree that much more can be done to assure its successful implementation.

Several years ago, we recommended that OSHA devote resources and staff to assist employers to comply with the standard. We believe that such a system was appropriate. We were also concerned that many of the high-priced Material Safety Data Sheet packages and training programs that were developed by vendors, which I spoke about earlier, were not providing adequate information.

Specifically, we recommended that the agency develop a generic training program that would cover the standard's requirements in major classes of chemical hazards and make the materials available at cost. This would assist employers and also help assure workers were adequately trained. We also recommended that OSHA utilize its consultation program to assist employers to comply with the standard.

Over $20 million in Federal money is directed annually to the States for OSHA compliance assistance for small businesses. The AFL–CIO believes it makes sense to use these funds in programs to help small businesses comply with the importance of the standard.

Unfortunately, OSHA's Assistant Secretary, John Pendergrass, believes that providing this compliance assistance, much of it, anyway, with respect to the training programs and data sheets, should be left to the private sector with Government playing little or no role. We do not, in fact, agree with that.

We believe that the recommendations that we have made for OSHA assistance and other approaches can still be used to effectively assist small businesses comply with the OSHA Hazard Communication Standard.

Now recently OSHA announced the availability of a compliance workbook for the standard and I have just reviewed that workbook and I think it does provide a good outline to how to carry out the OSHA Hazard Communication Standard, but obviously but is needed than just the outline.

Under the direction of the Federal Advisory Council on Occupational Safety and Health, which is a advisory committee to the Federal Government composed of labor and management on Federal Government workers' safety and health, a comprehensive package of training materials has been developed for Federal workers by the Department, OSHA, and other Federal agencies. The contractor who developed the materials for the Government is, unfortunately, trying to block their use in non-Federal workplaces, claiming it retains ownership of the product. To my knowledge, the Federal Government has not challenged his claim.

We are concerned that this is an important source of information. A lot of money was spent, over $500,000 of the taxpayers' money was spent on this program, and we believe that the Government should make the information widely available, even though the program was written for Federal Government employees. When you look at it, you see that it is, in fact, applicable to other workplaces that use hazardous chemicals.

Recently, the Federal Government also announced it will develop a chemical hazard information data base in the Material Safety Data Sheet format. We believe this system could be a source of information not only for the Federal agencies and Federal workers, but also for private-sector employers, small businesses, and workers in the private sectors.

Many of the Federal agencies believe this is a good idea. We have had significant discussions about it at the FACOSH Committee at OSHA, but right now there is a question of money. Who is going to pay for this? While everybody thinks it is a really good idea, nobody to date has been willing to earmark the funds for this important program.

There are also non-Federal sources of information and assistance available at reduced cost. Many of the States that have right-to-know laws and State OSHA programs have staff and materials specifically devoted to the Hazard Communication Standard and right-to-know laws and New Mexico, Virginia, Illinois, and Pennsylvania are among the States that have developed materials.

The State of New Jersey has also developed more than 700 hazardous chemical fact sheets for its right-to-know law. These sheets are similar to material safety data sheets. They are straightforward and easy to understand and they are available at a nominal cost from the State. I think they charge 10 or 25 cents per chemical. You can get the whole set for somewhere in the range of about $100.

In addition, labor/education programs, local coalitions, occupational safety health unions and trade associations also have materials available at a reasonable cost.

We believe that the Small Business Administration, working with the appropriate trade associations and OSHA, could develop a listing of these materials and make it available to the small business community.

So in conclusion, the OSHA Hazard Communication Standard, we believe, is an important standard for workers and employers of all sizes. The Small Business Administration and small business community shouldn't fight the standard. They should work with OSHA to develop programs and information to help employers meet their responsibilities to protect workers exposed to hazardous chemicals on the job. Thank you very much.

[Ms. Seminario's statement may be found in the appendix.]

Chairman SISISKY. Thank you. We have a vote on and we have about 5 minutes to make the vote. If you will just stay there, we will be back in about 10 or 15 minutes. Thank you.

The subcommittee will stand in recess.

[Recess.]

Chairman SISISKY. The subcommittee will come to order.

We left with Ms. Seminario finishing her statement, I think, and now we will open up for questions.

Mr. Ireland.

Mr. IRELAND. I noted by your testimony that you said small business shouldn't be fighting this standard, and I think, number one, they shouldn't, and number two, I think your organization, OSHA or anybody else, would make a quantum mistake in this thing if you assumed small business was fighting the standard. I don't think that listening to the testimony this morning, which you didn't hear, the problem is not fighting the standard; the problem is something else that you, indeed, pointed out and that is how you get at the regulation of it.

I think that some of the things that you said were just right on target. If we are going to talk about the role of Government in one setting, the standard, fine, setting a regulation, OK, but the regulation has to fit the animal, and it would seem to me, and I guess it would to you from your testimony, that the Federal Government has some obligation to tell the worker, employer, and manufacturer how to go about it.

I want to make sure that I am correct in assessing that that is what you are saying in that regard.

Ms. SEMINARIO. Yes; definitely. If I have mischaracterized the small business community's position on this, I apologize. I wasn't here earlier for the testimony.

One of the disadvantages of this is that we have been involved with these standard and right-to-know laws for a very, very long time and participated fully in the public hearings on the State laws, the hearings in the States, and in the communities. It was not until the last year that the small business community has come forward.

So it is sort of a little difficult for those of us who have been working on this since 1972 and in many discussions with all different kinds of employers at the State and Federal level on this and working out a standard which we think is basically sound. Obviously a standard of this magnitude that applies across the board, as opposed to a particular chemical or particular industry—there are going to be some problems with implementation and I think that if there weren't any, we would all be surprised.

At this point—I was talking to Mr. Wise from the Small Business Administration—and I guess we have been working toward this standard for such a long time that at this point, our goal is to try to successfully implement it, not to go back and look at changing it.

Mr. IRELAND. But I think your organization is also interested, whether they are union jobs or not is immaterial—you are interested in jobs and the success of enterprise in America. If you go at it with a meat axe and put people out of business, you save lives, but then they starve to death on the welfare lines.

I would only point out to you that more than large businesses, the small business, has a member of the family involved in the work force, or several of them or quite a number of them in a small business, and there should be plenty of incentive anyway, but in small business, from a family organization's point of view and participation, these people are interested.

The more we understand that small business isn't fighting the standard; they are fighting a debacle which you helped put your finger on of mismanaged bureaucratic regulationmaking. We have to solve that to get to the answer.

Ms. SEMINARIO. I would disagree. I don't think that the regulation is a debacle. I think the problems are now with its implementation and not enough has been done to put together the kind of programs and assistance to help employers comply, so I think maybe we do have a——

Mr. IRELAND. As far as I am concerned, the regulation and the implementation are all part of the responsibility of the bureaucratic entity.

Ms. SEMINARIO [continuing]. I would agree with you on that.

Mr. IRELAND. He is in a workplace that covers an awful lot of materials that he doesn't always know about because there are other subcontractors there at the same time. So he has no total knowledge of all of the hazards out there, awfully hard to find out, and from a training standpoint, contracting of that nature has substantial turnover.

How do you solve the fact of unknown substances out there as well as training for this substantial turnover? Do you suggest being trained and the guy carry around a card and say, you know, "I was trained on X, Y, Z job by some other subcontractor somewhere?" How do you solve that? It isn't solved in the OSHA regulations now.

Ms. SEMINARIO. You are right, it isn't solved and the issue of a mobile work force that is—it is difficult, whether it is hazard communication, asbestos or any other kind of standard. I think that the approach that you just mentioned, which is one where you put—that if you develop the capability and programs in place and that workers are trained and they have that basic capability, they take that with them.

We really have not devoted the kind of time and energy we need to develop those kinds of training programs, whether it is something like asbestos or it is on hazardous chemicals and I think that is not a bad approach at all.

There is nothing in the standard that precludes that kind of an approach. We have this tension in OSHA standard—it is sort of interesting watching their development. We have tension between, well, is it performance-oriented or is it specification-oriented? We like standards to be—I wouldn't say totally specification-oriented, but clear enough that when somebody reads it, they know what to do amendment make that very clear.

Mr. IRELAND. That doesn't exist now.

Ms. SEMINARIO. OSHA, on the other hand, and the business community and OMB and Small Business Administration usually will say, "No, no, we want a performance-oriented standard because we don't want you to tell us specifically how to do it."

Then we have a standard issue and then people have to comply with it because it is a legal obligation. Then they turn to OSHA and they say, "Well, now tell us how to do it."

So, as I said, this tension exists. I don't certainly have a solution for it, but clearly, we do—at least at Hazard Communication Standard on the implementation end—need to do more to assist employers to come into compliance. I don't think there is any doubt about that.

Mr. IRELAND. Will you be lending your effort to getting OSHA straightened out on that?

Ms. SEMINARIO. We continue to be. As I have said, I have been involved with respect to both—I am on the National Advisory Committee on Occupational Safety and Health, which is an advisory committee of labor/management/health folks to OSHA and I also sit on the Federal Advisory Council dealing with Federal agency programs. On the FACOSH side, we have been very involved, both labor and management in working with the agency and developing a package of programs for Federal employees. They have a Federal Hazard Communication program; they have a training program; they are now putting together a data sheet file.

Mr. IRELAND. I am talking about—let's stick to this example of a mobile work force. They haven't done that. You don't have Federal employees that mobile.

Ms. SEMINARIO. On that particular problem, yes; we are definitely involved and particularly with our building construction trade unions. They are the ones——

Mr. IRELAND. But why doesn't anything happen?

Ms. SEMINARIO [continuing]. Because I don't think on that particular issue anybody has the immediate solution. I don't think that OSHA is prepared to, nor are employers prepared to say, "We're going to take on a responsibility to train our workers in safety and health problems on the job and give them."

Mr. IRELAND. But the regulation tells the employer to do that right now. It tells him he has to train them.

Ms. SEMINARIO. He has to train them with respect to hazardous chemicals; that is correct.

Mr. IRELAND. Right. Yet, it tells him that but—and this is the guts of the whole thing—and nobody is shying away from the fact that the person ought to be trained. The fact is that these people are turning over at a couple hundred percent a year. They may be trained by others, and you don't know what the—so it is all well to, you know, say that in a regulation and the bureaucrat goes home and grills on the weekend on his outdoor grill and has a nice, pleasant time, while some poor guy that is running a business, large or small, is trying to figure out how to get along with these things.

It would seem to me that your organization ought to be joining the organizations of small business and small businesses themselves on a real high horse and saying, "Bureaucracy, get something done about that." The idea of—you know, you can't just stop it just saying, "Isn't it wonderful for everybody to be safe." You have to do something about it.

Ms. SEMINARIO. That is right, but the responsibility to do something is actually on the employers. There is nothing in this standard that would preclude in any way contractors' associations setting up training and education programs to train workers about hazardous substances. There is nothing that would preclude that at all. I think that that is, in fact, the responsibility of employers.

Mr. IRELAND. How about this? Is it the responsibility of the union? Is it a responsibility—the Government has set the standards. Is it the responsibility of the Government? Whose responsibility is it?

Ms. SEMINARIO. I think it is the responsibility of the Government to provide some assistance, but it is the responsibility of the employers to actually conduct the training and make sure that their workers have that information. They conduct businesses in this country. They have the legal obligation to assure the safety and health of workers on the job. So, yes, they do have the responsibility. That is not to say there shouldn't be a system; that is not to say there shouldn't be cooperative efforts.

I mean, these are all things that we support, but the employer has that ultimate responsibility and they can't just shirk that off and say, "Well, we don't really know how to do it and nobody provided us the ultimate answer." I think we do have to work together to come up with better programs, but you still cannot relieve the employer of that ultimate responsibility.

Mr. IRELAND. Thank you, Mr. Chairman.

Chairman SISISKY. I think you mentioned that this standard is now coming to the forefront. I think the reason is because we just expanded the standard application to the nonmanufacturing area only a year ago.

Ms. SEMINARIO. We got into nonmanufacturing actually long before that because even as of 2 years ago, we have a system in this country of both Federal and State health and safety protections and even as of 2 years ago, 25 of the States, either under their State OSHA plans or State right-to-know laws, had already covered manufacturing. They were covered, essentially equivalent to the Hazard Communication Standard.

It wasn't until 2 years ago that the standard on a Federal level was extended and, therefore, filled in in those other 25 States, but long before 2 years ago, nonmanufacturing was covered under State right-to-know laws and State OSHA plans.

Chairman SISISKY. When we were dealing with manufacturers, we were dealing in smaller numbers. Now, all of a sudden, this horizon is broad.

I come from a background of small business. I started in 1949 and I was literally the chief cook and bottle-washer as well as everything else. I had major problems figuring out how to do all the Federal forms that relate to employment compensation and other Federal programs * * * and I know it is not easy. I had to do everything!

I notice everybody that testified this morning is with trade associations. But there are vast numbers of people out there that are operating businesses that aren't members of trade associations. They can't take a day off of work to attend seminars or learn how to do their job better.

I have seminars throughout my district for minority companies all the time, to encourage them to get involved in Government contracts. We will have only 100 people show up and I ask them, "Why didn't the others come?" and they say, "Can't take a day off. It's my livelihood."

Nobody is arguing about making the workplace safe, but we used the example of Pepto-Bismol this morning, which is a flammable hazardous material, but now we are now talking about 575,000 different items.

We could talk about the vinegar in pickles. I mean, that is going far——

Ms. SEMINARIO. But we can also talk about benzene and carbon dysulfide and carbon tetrachloride——

Chairman SISISKY. No question about that, but somehow we have to do that to bring a little bit more saneness to this issue in order to make it work. New litigation will do more to refine this standard.

The ultimate goal of the AFL–CIO, and I'm sure yours is the same, is to make the workplace safer. Am I correct?

Ms. SEMINARIO. That is right, and to make this standard work. We would agree that there are problems with its implementation, that there could be a lot more effort directed toward it, so I don't really think there is any real disagreement there.

Chairman SISISKY. I would just hope and I believe my friend, Mr. Ireland, is also saying that your group would take the small busi-

ness person into consideration and help act as an advocate for a more workable program.

Ms. SEMINARIO. Yes; and that is one of the reasons when we were going through the rulemaking on this that we were very adamant on the position that when you look at requirements to develop the hazard information that that sit with the parties that actually have that ability, which is the chemical manufacturers.

We didn't want to put a lot of unfair burdens on users/employers. We didn't think it was appropriate to put them in the position of having all employers——

Chairman SISISKY. Retailers are included in this; am I correct?

Ms. SEMINARIO. They are included in the standard, but they are not—their requirements under the standard are those of user/employers and not of chemical manufacturers.

Chairman SISISKY. Right, so they have to have the MSDS and I have been told they store it on a shelf or, if they have electricians or plumbers, would have to file on their trucks. Am I correct everything would have to be stored on the vehicle?

Ms. SEMINARIO. No; I don't think that is a correct interpretation of the standard. We wouldn't read it that way. We believe——

Chairman SISISKY. One of the problems that we have is nobody is reading it, how can we help the small business person and still make the standard workable?

Ms. SEMINARIO. No; I think that——

Chairman SISISKY. But I think I am right, they have to have the MSDS's on the truck and you know where they are going to be, behind the seat. The workers will be stepping on them and they will become unusable.

Ms. Seminario, thank you very much for appearing this morning. We certainly appreciate you being here.

Ms. SEMINARIO. Thank you.

Chairman SISISKY. Hopefully we can work together to try to find a solution to this.

Our next witness is Mr. Charles Cadwell, the Deputy Chief Counsel, Office of the Chief Counsel for Advocacy of the Small Business Administration.

Welcome, Mr. Cadwell, and you may proceed.

TESTIMONY OF CHARLES CADWELL, DEPUTY CHIEF COUNSEL, OFFICE OF THE CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. CADWELL. Thank you very much, Mr. Chairman, Mr. Ireland. It is good to be here and I appreciate the invitation.

Mr. Chairman, I have a prepared statement that, with your permission, I would like to ask be inserted in the record.

Chairman SISISKY. Without objection.

Mr. CADWELL. I apologize for not having been here for the earlier part of your hearing. I had an important meeting on another issue of interest to you: National trade.

This morning, I would like to talk about two concerns that we have with the Hazard Communication Standard, as adopted by the Occupational Safety and Health Administration. The first is that there are aspects of this rule that are simply unworkable for many

small businesses. The result is that we have a rule that we think is unnecessarily burdensome on small employers.

The second is that because of this, outreach is considerably more difficult than it needs to be and that the little outreach that has been done so far falls short of what we think will be ultimately needed.

Our involvement with OSHA on this issue has run over several years. We were involved in the development of the manufacturing standard back in the early 1980's. We have had meetings with all levels of OSHA on this issue. We have filed detailed comments at different points in their rulemaking. We have hired our own contractor to do economic analysis. We have worked with dozens of trade groups, scores of small business owners. We have talked with over half of the State OSHA offices who oversee their own hazard communication programs. So our criticisms of this rule are not lightly made.

Our sensitivity to the impact of Federal rules on small business stems from our work with every Federal agency and our economic research and, again, our contacts with hundreds of thousands of small business owners.

We share with you and with OSHA a deep concern for workplace safety. As a Federal office, we are not simply blind advocates against any rule that affects small business. On the other hand, we are very strong advocates for rules that are the least burdensome possible and rules that are developed with careful consideration of alternatives that will reduce burdens.

The ability of OSHA, or anybody else for that matter, to communicate the requirements of this rule to the millions of small employers who are covered today—required to be in compliance with this rule today—is affected fundamentally by the regulatory alternatives that OSHA ended up adopting.

I would like to use my time this morning to explain why this is the case and to suggest some steps that we think OSHA should consider to improve the outreach for this rule.

This rule is the largest comprehensive regulatory scheme attempted by the Department of Labor. It will affect as many as 4.5 million employers, up to 70 million workers and, depending on whose estimate you use, will cost American business between $687 million and $2 billion in compliance costs for the first year. The burdens are going to fall disproportionately on small employers.

We have had extensive disagreement with OSHA on the size of these burden estimates and I know that it is not the purpose of your hearing this morning to explore those. However, with a burden estimated to be between $687 million and $2 billion, it seems to me that this is one of the largest regulatory programs ever imposed on American business.

Those of us inside the Beltway here are often accused of setting policy without thinking about the real-world impacts. This rule is one that I think can be indicted on that score.

If we are going to impose a $2 billion tax on small businesses, it seems to me that we need to take a lot of care to make sure that we give the business community, particularly the small business community, more guidance, clearer guidance, and more timely

guidance on what it is that we are going to be enforcing against them.

As of August 1, every workplace—except yours and mine, since the Congress and the Federal agencies are so far exempt, and except the construction industry and some very small farms—must be in compliance with this rule. In order to comply, an employer must develop and implement a written hazard communication program. He or she must collect and maintain a library of material safety data sheets for any of 575,000 different hazardous chemicals that may be present in the workplace.

Of the newly covered employers who have not previously been subject to a hazard communication rule, at least 90 percent are small firms. Even a conservative estimate of the number of burden hours needed for compliance indicates that the time involved for this rule is almost as great as that involved in filling out income tax forms.

It is interesting that the Federal workplace, such as my office, where we have 50 or 60 employees, has more than 16 months to complete training our workers about the most hazardous substances, while the small employer or a counterpart in a law firm with the same number of attorneys and economists that we have is required to be in compliance today.

I will tell you that I suspect the vast majority of employers are blissfully ignorant of the rule and are not in compliance with any of the requirements for a written training program, having MSDS's, or any of the other requirements.

Before I talk about specific outreach, let me identify three areas where I think outreach will be difficult because of a substantive alternative that was adopted by OSHA. The first of these is the requirement that MSDS's be used in hazard communication in every case; the decision not to adopt any labeling alternative or a generic industry or hazard category MSDS-type sheet, something that is simply easier to understand for the average small business owner or worker.

There are about 23 million workers in this country who read below the 8th grade level. That is about 15 to 20 percent of our work force. Seventy percent of the material already in the workplace is at a 9th grade level and I would submit that material safety data sheets are well, well above that. So I question whether sole reliance on material safety data sheets to communicate hazardous information to employees is going to really accomplish the goal we all share.

The court order that instigated the expansion of the Hazard Communication Standard to nonmanufacturing employers directed OSHA to develop a standard, not this standard. What we have here is a standard that was developed for the manufacturing sector and has been adopted, virtually wholesale, for the nonmanufacturing sector.

The second issue which limits the effectiveness of any outreach program has to do with the very narrow definition of consumer products that has been written in this rule to exempt certain substances from the hazard communication requirement.

What the rule requires is that an employer, in order to not comply with the hazard standard with respect to a particular sub-

stance, demonstrate that a consumer product is used in the same manner as normal consumer use and that that use will result in the duration and frequency of exposure which is not greater than the exposure experienced by consumers. That is plain English. I understand it, you understand it, but for the small employer who has to determine whether household bleach fits that definition * * *. In my house, we don't use—I don't, anyway—use bleach too often. At your house, it may get used a whole lot more often.

At my store I run, I wonder whether I am going to be able to determine whether my janitor is using it as much as I do or as much as you do, whether that exposure is more or less. It's a very subjective standard that will force the small employer—who is faced with any number of different OSHA inspectors who will have their own versions of what is normal use for consumers and who will come in one week or a different week, one workplace, another workplace, enforcing essentially a very vague and ambiguous standard—to collect MSDS's for every consumer product to protect themselves against the ambiguities inherent in this rule.

A better standard exists. It is one that Congress wrote into the Superfund amendments adopted several years ago. That is a standard that looks at the form and concentration of the product. Basically, is it packaged in a form for sale to consumers? So when you go to Hechinger's, if it comes off the shelf there, it is a consumer product and it is exempt. All of us are familiar with those products. We use them in our homes. A worker and an employer are similarly going to be familiar.

The third area where I think outreach is complicated by the substantive decisions made with respect to this rule has to do with the multiemployer work site issue that you have heard about earlier this morning. There are alternatives that are less burdensome and more workable, and therefore, more effective in communicating about hazards to employees.

Several States, as you know, have their own mini-HAZCOM programs for nonmanufacturing employers. Pennsylvania and Oregon, for example, have very good, I think at least more workable multiemployer work site provisions.

Earlier this month, 13 months after issuing the final rule, OSHA produced their compliance kit for Hazard Communication, which is a very useful book as far as it goes. Employers now have the opportunity to purchase this book for $18 from the Government Printing Office and in 4 to 8 weeks, they will have it. The rule is effective August 1, however.

There is also, I understand, a short brochure describing the program, but basically that is the extent of outreach to date. I am informed that OSHA has also approved one industry-developed training program. It is not clear to us whether they intend to invite other trade associations or industry groups to submit similar programs. That would be an important step, I think, if they did.

The main drawback, I think, to the compliance kit that has been put together is that it assumes that employers are going to be able to get material safety data sheets on request from manufacturers. We have done some work looking at the ability of some small Maryland businesses who are nearby to get material safety data sheets from manufacturers or distributors. One auto parts dealer

called his distributor and said, "I'd like the material safety data sheets for the 80 products I have in my shop."

The manufacturer said, "Forget it. We manufacture or distribute 3,000 products. I'll send you the carton. You figure out which things you have."

Other distributors and manufacturers, particularly for a retail business, just don't have the time. It is very expensive to pull out the MSDS for one product. You know, what is the Material Safety Data Sheet for WD–40 on your long list of products?

The nonworkability of that distribution, the downstream distribution of material safety data sheets, we think will make it very difficult to implement this rule for the small employer. It doesn't deal with the ability to enforce the rule. People either have the sheets or they don't, but to comply with the rule is very, very difficult.

I would like to talk about outreach in the remaining couple of minutes because I think it is important regardless of what rule is adopted. As you know, the rulemaking is still open on some very narrow issues with a sort of catch-all that OSHA is interested in hearing comments about any other issues in the notice. We are interested in having that catch-all phrase be taken very seriously so that we actually look at some of the remaining substantive problems.

Regardless of that, I think there are some outreach efforts that can be considered. I think some of the other Federal agencies who have very broad regulatory programs can serve as an example.

EPA is one example of an agency that we work with considerably. They have had several major rulemakings they have implemented in recent years, but one is the underground storage tank rule dealing with gasoline and other tanks that are leaking.

That rule has had considerable success in its implementation and that has been due to a couple of things. One is that very early on, before they finalized the rule, the EPA was working with industry groups, with State and local governments, a whole range of people, on outreach materials. They spent a considerable amount of time with our Business Development Office at SBA talking about how to write a plain English brochure that small businesses, small employers can understand. They provided camera-ready copies of their brochures for trade groups. They developed industry-specific brochures so that gasoline stations can know what things they need to worry about with respect to underground storage tanks. They produced videotapes in cooperation with different industry groups.

Similarly, with respect to their small quantity generator rule, another hazardous substance rule, they printed a handbook and distributed it to explain to small businesses how to comply with the interim requirements of that rule. When the final rule was published, they produced another booklet, 650,000 copies of it, that they gave away for free. They conducted teleconferences; they have had meetings around the country. We have worked with them for a considerable amount of time on their title III of Superfund rules, which, as you know, are the community right-to-know rules which are very closely related to the rules that are at issue today.

Another agency that engages in considerable public outreach, although admittedly they do it with sticky fingers, is the Internal

Revenue Service. IRS has a regulatory program, if you will, a paperwork program. They require recordkeeping and they require businesses to do things they might not otherwise do that are very extensive.

To ensure, to assist small employers, particularly, to comply with that program, they have toll-free telephone lines in several languages; they have problem-resolution offices; they have numerous publications; they conduct workshops in conjunction with other agencies, with the SBA, for example; they cooperate with accounting firms; they have a whole range of essential resources out there for any agency to draw on to get the word out about a Federal rule.

The one document that we have from the Occupational Safety and Health Administration, I don't think is going to do the job, particularly as you get into smaller work sites where they may not understand a lot of the stuff that is in the current guide, which seems aimed at manufacturing work sites primarily, and/or they don't have very significant hazard communication problems.

In our office, we have Xerox toner; we have White-Out; we may have rubber cement. I am not sure what else we have. We don't need to have a 3-inch book. There is a very simple program we could develop and, in fact, in the Federal Government, we do have that program. It is a fill-in-the-blank training program that the Federal workplace can use, but a private workplace cannot. It seems to me that some sort of a generic training program is entirely appropriate for a small employer.

Finally, I think an example from a different agency is instructive, and that is, there is no particular reason that we can't communicate directly with the affected employers here. A couple of years ago, Congress passed a law requiring every employer to verify the citizenship of every new hire. The Immigration and Naturalization Service mailed to every employer a copy of a 16-page booklet in plain English describing what is required by that rule. They used an IRS mailing list that they obtained through some interagency agreement.

Whether OSHA would use that mailing list or whether they would work with State governments to use unemployment insurance records, the mailing lists exist. INS printed 7 million booklets. It cost them about $2 million. It cost them about $650,000 in postage. But what they did was they made sure that the employers whose compliance they wanted for that very important law had every opportunity to get information which explained how to comply with that rule.

Whether or not the immigration law is being perfectly complied with today is another issue, but I applaud the effort involved—because we were placing a considerable burden on employers in that case, as we are here.

At SBA, we, of course, are willing to offer any assistance we can to OSHA, as has been done for other Federal agencies, including the Immigration and Naturalization Service, IRS, and EPA. We are more than glad to distribute, make available at our district offices, any publications that are produced. Unfortunately, there is nothing to hand out at this point.

We have instructed the people who answer our toll-free hotline that we maintain, where we get 300 or 400 calls a day, to be aware

of and have available to callers the list of their State or regional OSHA resource telephone numbers so people can have a local contact to call for information about this rule.

Finally, I would suggest that it may be worth considering at the Labor Department having some sort of a small business ombudsperson. The EPA has a person who fills that function and it accomplishes several important things.

One is that it makes sure that early in the rulemaking process, we are thinking more in a focused way about small business; and second, it helps organize the different parts of the agency which are involved in implementing the rule, enforcement, information, education, and outreach.

In conclusion, Mr. Chairman, this is a rule over which we have considerable disagreement with our colleagues in the Occupational Safety and Health Administration with respect to its substance. It is our hope that the rule is not locked tight and that some important changes can be made for two reasons: One, so small business will have better compliance; and two, so that outreach will be more effective.

I would be happy to answer any of your questions.

[Mr. Cadwell's statement may be found in the appendix.]

Chairman SISISKY. Thank you very much, Mr. Cadwell.

Before I ask my colleague, let me just ask one question while it is on my mind. Was SBA—did you follow the process with OSHA? Did they ask you how this would affect small business as a rulemaking?

Mr. CADWELL. As you know, every Federal regulatory agency is required to comply with the Regulatory Flexibility Act, which requires analysis of small business impacts. OSHA prepared an analysis of small business impacts that we concluded was not adequate. We hired our own contractor to look at the number of covered workers, the number of chemicals in the typical nonmanufacturing workplace, basically to go over the same economic analysis grounds, and that is the source of the difference in our estimates of the cost of this rule.

So we have worked with them very closely, but obviously, given our disagreement at the end, not as productively as we would like.

Chairman SISISKY. Mr. Ireland.

Mr. IRELAND. Following up on the question about the Regulatory Flexibility Act, are you satisfied that analysis was made? I know we have here a copy of your letter of February 11 to Mr. Pendergrass. There seem to be four or five specifics in there plus a couple of questions about their analysis.

I assume what you are saying is they haven't responded in any form to that. I am aware that you have the opportunity to file a brief in the court. Have you filed with the court? Will you file with the court?

Mr. CADWELL. I don't expect—there are plenty of parties in front of the court to make sure that all the relevant arguments are going to get made.

Our concern with the Reg Flex analysis that was done has to do with the consideration of alternatives, because there was certainly plenty of analysis in the rulemaking record here. What there is not is any analysis of the burden of any different alternatives.

For example, the difference between the consumer product exemption that was chosen and the one that is contained in the Superfund law results in dramatically different coverage of some of the substances in the ordinary nonmanufacturing workplace. I don't have concrete numbers to tell you what the difference in compliance costs would be.

The Regulatory Flexibility Act, however, calls on agencies to conduct that sort of analysis. As you go through the issues and our different correspondence with OSHA, that is basically the source of our concern, the fact that the alternatives have not been examined the way they should be.

Mr. IRELAND. We all know that there is this litigation going on at the present time, on the other hand—I may be incorrect, but is it not so that filing under the Regulatory Flexibility Act with the court that a proper analysis hasn't been done—it is only the Chief Counsel for Advocacy that can do that, right?

Mr. CADWELL. Only the Chief Counsel that can do what?

Mr. IRELAND. That can file with the court that the Regulatory Flexibility Act hasn't been complied with? It is not a subject—in other words, what I am addressing is that you are saying that haven't filed with the court, though everybody else is suing everybody else, but don't you have a unique position and shouldn't you be in there, not with the same suit, but a separate suit doing something about this?

Mr. CADWELL. No; the issue of the enforceability of the Regulatory Flexibility Act is a difficult subject for us because the courts have been holding that essentially there is no judicial review of the substance—the decision, first of all, to certify a rule as having no impact. The most recent OSHA, August 8 rule, as I recollect, has been certified as having no impact.

That decision essentially is nonreviewable according to the courts, regardless of who is in court, who is before the court.

Our interest, frankly, has been in making sure that the issues were in front of OSHA and given the many parties to this suit, in terms of our resources in getting involved in something like that, we are confident that the small business views are being represented. That is really, I think, the source—the reason we are not there.

Chairman SISISKY. You don't file under the Paperwork Reduction Act——

Mr. CADWELL. We did participate in the OMB hearings because, as you know, any person can participate in those, including a Federal agency, and so, in fact, I went over and testified, I guess it was probably a year ago, and we filed extensive comments because, as you know, this is a paperwork-intensive rule.

Chairman SISISKY. We heard testimony this morning from one distributor of pharmaceutical products, he said, I think it was 10 million forms he had to file every year. That is a lot of paperwork.

Mr. CADWELL. It is, and so the paperwork and the substance of the regulation are very intertwined here. That is why we have consistently argued, urged OSHA to look at ways of reducing that mountain of paper. We talked to a business here in suburban Maryland who spent 80 hours going through the MSDS's that he got from his suppliers, trying to comply with the Maryland hazard communication program.

That is before he has trained anyone, before he has done a written training program, before he has done anything. That is simply to keep track of the paper to start up.

That doesn't produce workers who are informed about workplace hazards, which is the whole point here. Enforcement against small business is not the goal; the goal is informed workers.

So we need a rule that focuses on that result, rather than on the ease of enforcement or measurable things—you know, things which you can check off: Are there MSDS's for this thing on the shelf. That is very easy to enforce against. Either you have done it or you haven't.

If our goal is safe workplaces, then I think we should focus on ways to help employers provide that, not necessarily on ways that we can keep track in individual specific details of how they do it.

Chairman SISISKY. Have you researched how this would affect the liability of small business people as it relates to their employees who bring suits?

Mr. CADWELL. No; we haven't. I think, obviously to the extent that you inform workers about hazards they may be exposed to, that is an important thing to do, and to the extent that it makes them aware of liability that they may want to assert because of some damage incurred to them, it is going to increase liability problems for employers. Some of that may be warranted if people are, in fact, exposing workers to hazardous substances.

This is an issue that was raised, of course, much more dramatically in the high-risk notification legislation that was considered here this year. But we have not focused on that aspect of this rule. We are still hopeful that the rule will be less burdensome before all is said and done.

Chairman SISISKY. It may be a good idea for you to focus on that issue.

Just to follow up—not on that, but let's say the rule was promulgated——

Mr. CADWELL. The rule is in effect today.

Chairman SISISKY. OK, I mean, the court throws it out—what is the SBA prepared to do? I think SBA has a responsibility also in informing small business.

Mr. CADWELL. We do and we try to do that with the dozens of Federal regulatory agencies to the extent that we can. Obviously, it is not our job to provide compliance assistance for every individual business for every Federal and State regulatory program. On the other hand, we are prepared to distribute any materials that are available from any agency, including OSHA, through our 65-plus field and branch offices.

We do a monthly newsletter in the Office of Advocacy to trade associations and small business owners where we have been talking about this rule for months now, informing people about the effective dates of the requirements, the status of the rulemaking, and, as I mentioned earlier, we have our toll-free hotline where we have people prepared to point small business owners to the source of expert information. I don't think we are ever going to have those people answering the phones experts in the details of this rule, but our function with that answer desk is to make sure that people are talking to the right Federal agency, whether it is a regional or

headquarters office, with the smallest number of phone calls. I think we are usually fairly effective in that.

Chairman SISISKY. Mr. Ireland.

Mr. IRELAND. I have a question about the States. I am not clear where an employer is if his State has a similar law—Virginia, I know, is one—whether the OSHA regulations supersede the State regulations and how does the employer know and what do you tell the small businessman what his liability is?

Mr. CADWELL. This is a question that a smart person would defer to the person following me on the program, but nonetheless, let me charge in.

As I understand it, basically States are required to have a rule at least as stringent as the OSHA standard. As you know, in about half the States, all OSHA rules are implemented by the State Occupational Safety and Health Department, so-called State plans States.

In fact, many of those States currently have hazard communication programs. It is our discussions with the small businesses and the people implementing those State programs that gives us great concern about the practicality of this rule.

Those States generally have—or many of them have a different consumer product exemption. They have more workable, multiemployer work site programs and in many of them, they are finding very low compliance in the nonmanufacturing sector, despite the fact that their rules are more workable.

That lesson gives us great concern about our ability as a Federal Government to help small businesses comply with this. That is one of the other areas where we had hoped for greater analysis prior to issuance of a final rule.

Mr. IRELAND. Again, reflecting on the liability question that the chairman asked, who says which is more stringent?

Mr. CADWELL. I believe it is a provision in the authorizing legislation for all these regulations, but I——

Mr. IRELAND. How does the small employer determine that?

Mr. CADWELL. Basically, I think that the Occupational Safety and Health Administration has the authority to determine whether a State plan meets the requirements, but I would recommend that for reliable advice, you ask the Department.

Mr. IRELAND. Mr. Chairman, if I am not out of order, I think we have a very good example in the Superfund operation and if we could ask Ms. Seminario if she would comment on that. She is still with us. If she wouldn't mind, would she be willing to comment on the Superfund definition.

You and I had a dialogue about—and in your remarks, or some of the others, on consumer products and apparently, in Superfund legislation, which you are most assuredly familiar, there is a definition. Would you comment on that and would you say that that was a reasonable definition to use in this regulation as we try to help poor old OSHA get the ox out of the ditch?

Ms. SEMINARIO. We think the definition under Superfund is a little too restrictive. I haven't gone back to look recently at the definition, but my understanding is that there are—the definition says that certain consumer products are just exempt entirely. That is more or less how it works.

Exactly how that is defined, I can't remember exactly. The way the OSHA standard works on the other hand, it really has less to do with the product, just because it is a consumer product, but more with respect to its use.

We have concerns because we do have members, let's say, who work in janitorial services. Their employers, for whatever reason, may buy the consumer products, rather than going down the street to the distributor and getting the same product, but from a different source. So our concern is that when you have a product that just comes off a shelf in the supermarket or a hardware store, if you have somebody using that day in and day out in their job, and it is a hazardous chemical, it should still be covered.

So we like the approach that OSHA has taken with respect to use. If somebody is not using it as you would use a consumer product in your home, but is using it as part of their job in an industrial or service activity, it should be covered. So we do think that the approach in Superfund is too restrictive because it would essentially say all consumer products just aren't covered because they happen to come off the shelf, rather than because of the nature of the hazard itself.

So I think there is a problem with the definition in Superfund.

Chairman SISISKY. Mr. Cadwell, let me ask you a question. In your interpretation of the law, it has no limitation on the number of employees, is that correct?

Mr. CADWELL. No; it applies to every workplace.

Chairman SISISKY. A workplace could be in a home. If you have a day worker coming in, following what you——

Ms. SEMINARIO. They are not covered—OSHA doesn't cover those settings.

Chairman SISISKY. What do you mean? Does the law cover home employment?

Ms. SEMINARIO. No; the act does not.

Chairman SISISKY. The act does not cover——

Ms. SEMINARIO. No.

Chairman SISISKY. Are you sure it is excluded?

Mr. CADWELL. I am not an expert on that aspect.

Ms. SEMINARIO. I am not a lawyer.

Chairman SISISKY. It is an interesting question, but following what you said, if you have someone in the home and they are using things day in and day out, you would obviously have to have an MSDS in the home, would you not?

Mr. CADWELL. Mr. Chairman, outside the——

Ms. SEMINARIO. I don't think they are really covered. Those aren't the situations that we are——

Chairman SISISKY. But I mean, the law still may cover—obviously nobody is going to check the home unless there is a complaint.

Ms. SEMINARIO. But I don't think they are covered under the law.

Mr. CADWELL. Outside the home, even in a small commercial setting, the way the rule is currently written, it still is difficult because the consumer product exemption is made more difficult by the way the rule is written. That is, a small retailer is not required, apparently, to provide MSDS's except for commercial accounts.

If you are a small business who doesn't happen to have a commercial account with Hechinger's, when you go to Hechinger's, they are not going to have an MSDS for you. Therefore, you will be required to write to the manufacturer to ask for that MSDS.

Our experience with the feasibility of that sort of process gives me considerable pause about the likelihood of success. The consumer product definition is obviously a very key part of this rule. A workable rule would focus on the most hazardous substances, the ones workers are least likely to be familiar with in their normal everyday experience and focus on making sure that they are trained on those, that there is information available to them about the hazards and how to deal with those hazards and that we are aware of what is in the workplace.

If we focus on the hazards—if there is a problem with a broader consumer product definition down the road, we can modify it. But to start out and include everything that moves in the initial rule strikes me as overkill.

Mr. IRELAND. Why don't we get into the Pepto-Bismol example that we had earlier this morning where, yes, it comes off the shelf and we assume that—and familiar with is the governing word——

Ms. SEMINARIO. That is incorrect.

Mr. IRELAND [continuing]. Well, Pepto-Bismol is a hazardous substance. I am not sure you are aware of that, but it definitely——

Mr. CADWELL. From Procter & Gamble.

Mr. IRELAND [continuing]. Is hazardous the MSDS is 30 pages long or something like that. But it fits with what the gentlelady says here, which is it is hazardous if it is used in great quantity, but we would assume that most Americans know something about Pepto-Bismol. It is being familiar with which is the key. I wonder where the place is where we start giving the good old average American some credit for having some sense?

Apparently, in your way of thinking, the product—if it is off the shelf, but used in a business, the employee checks his brains at the border and doesn't—when he comes in. I don't know——

Ms. SEMINARIO. No; that is not what we are saying. I think there is some misinformation out here. Pepto-Bismol, to my understanding, is not covered by the standard. It is a drug and drugs basically are not covered by the——

Mr. IRELAND. No, no, no, and there are lots of examples like that.

Chairman SISISKY. You should read the MSDS on it.

Ms. SEMINARIO. There may be an MSDS on it, but Pepto-Bismol, with respect to—in the workplace, is not covered by the standard, and so if that information is out there on the table, I think you should get it off.

Mr. IRELAND. It is.

Mr. CADWELL. Mr. Chairman, the importance of the consumer product definition is not that it exempts employers from making sure that workers are aware of hazards in the workplace, but exempts them from the requirement of maintaining an MSDS. If it is bleach, if it is other substances, there are existing labeling requirements that provide information about how to use and handle and how to deal with misuse of those substances.

Our concern is to eliminate the paperwork requirement, focus on the information, labeling, whatever else, and through that method,

achieve our goal, which is to reduce the small business paperwork burdens and OSHA's goal of——

Chairman SISISKY. Maybe our next witness can clear up some of those problems.

However, we have to vote now. Ms. Seminario, you missed the testimony of our small business witnesses. I think you will find their testimony interesting they are real problems of real people and real companies.

Today's witnesses are members of trade associations. God only knows what is going to happen to the small business people who are not members of trade associations. I would assume the largest number of people are not members of associations. I would hope that you would read the testimony and I do thank you, Mr. Cadwell. I thank you again, Ms. Seminario.

We are going to go vote and we will——

Mr. IRELAND. Mr. Chairman, let me read just for the record. I found the Procter & Gamble. Section II, Hazardous Ingredient Identifying Number. It has a big long number.

This mixture is a drug product regulated by FDA. This mixture has been tested as a whole and is considered a combustible liquid within the meaning of OSHA Hazard Communication Standard.

Ms. SEMINARIO. It may be within the definition, but the standard doesn't cover——

Mr. IRELAND. But the minute it is within that definition, some poor employee has to work with Pepto-Bismol. You get two bottles in your place, you are in trouble.

Ms. SEMINARIO. No; but you are not. The standard doesn't cover Pepto-Bismol. Procter & Gamble may be putting that on for its own purposes, but the OSHA standard doesn't cover Pepto-Bismol because it is a drug and it is exempt under the standard. That is my understanding.

Chairman SISISKY. Obviously, we are going to have to get the point cleared up. Thank you.

We will be in recess for the next 10 minutes at least.

[Recess.]

Mr. SISISKY. The subcommittee will come to order.

Our next witness, and last witness today, is Mr. Frank A. White, Deputy Assistant Secretary; and Ms. Jennifer Silk, who is a Health Scientist with the Occupational Safety and Health Administration. We welcome you here and you may proceed.

TESTIMONY OF FRANK A. WHITE, DEPUTY ASSISTANT SECRETARY; AND JENNIFER SILK, HEALTH SCIENTIST, OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION

Mr. WHITE. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I truly hope, in the earlier words of Mr. Ireland, that you can help us get the ox out of this ditch and I will be happy to explore ways to do that today.

Thank you for the opportunity to discuss the impact of OSHA's Hazard Communication Standard on small business employers and also to discuss ways in which small employers can acquire a better

understanding of their responsibilities under this landmark standard.

As you mentioned, with me at the table is Jennifer Silk, who has been the agency's project director for this standard since 1981. She can answer all the hard questions you have, Mr. Chairman.

I have submitted a copy of our overall statement for the record and I would like to summarize that if I may, and begin with a little background that may have been gone over, but I would like to reemphasize some points.

The Hazard Communication Standard was applicable initially, as you are aware, to the manufacturing sector of the economy only. Then, in August 1987, it was expanded to cover all workplaces where employees are exposed to hazardous chemicals.

The standard is based on the simple premise that workers have both a need and a right to know the identities and hazards of chemicals they work with, as well as the associated protective measures. In addition, employers need this information as well to fulfill their obligations to provide a safe and healthful workplace.

Together, the actions of employees and employers, based on this knowledge gleaned from this standard, will result in decreased exposures and subsequently in a reduction of chemical source illnesses and injuries.

The required information is to be communicated to workers in three ways: through labels on containers, through more detailed information bulletins known as material safety data sheets, which maybe in this hearing has become a dirty word, and finally, through training.

An employer's plan for implementing those provisions constitutes the facility's hazard communication program. Labels include brief summaries of and warnings about the hazards of materials and provide an identity for the product which can be used to access the more detailed information contained on MSDS's.

These MSDS's provide more extensive data about the chemical, as well as critical information concerning the way in which the chemical enters the body, potential health effects, recommended exposure, limits and proper protective measures.

In the training sessions, workers are to be instructed on how to use such information and are trained regarding the hazards and available protective measures in their own workplaces.

With respect to the obligations of employers under the standard, employers who merely use chemicals rather than produce them are able to rely on the information provided by their suppliers. Most nonmanufacturing employers would be in this category. Thus, the containers they receive will already be labeled and they will be given a Material Safety Data Sheet at the time of the first shipment.

The responsibilities of such employers are limited to establishing a hazard communication program to make the information available to workers and to train them to access it properly and understand its import.

Employers using chemicals have no independent responsibility to evaluate the hazards of chemicals. For purposes of their hazard communication programs, they must simply obtain, maintain and

make available to their employees the information provided by their suppliers.

Our rulemaking record on this, which is very extensive, as I am sure you are aware, indicates that all three of the described means of communication—material safety data sheets, labels and training—are necessary to have a fully effective standard.

The hazard communication requirements for the generation and dissemination of information regarding chemical hazards are based on extensive industry experience in these areas, as well as on the needs of workers and the recommendations of occupational safety and health professionals.

While OSHA was involved in promulgating its Hazard Communication Standard, several States enacted worker right-to-know laws similar to the Federal rule. The State laws, even prior to the issuance of our standard, required communication of information and, in general, used the basic strategy of labels, MSDS's and training.

By August 1987, when OSHA promulgated its rule expanding the scope of the standard from manufacturing to all industry sectors, approximately half of all employees in nonmanufacturing were already covered under existing State laws.

Now, OSHA has focused a great deal of energy examining the feasibility of the Hazard Communication Standard as it applies to the nonmanufacturing sector. We have concluded that this standard is feasible, and by feasible, I mean not only capable of being done, but practicable as well.

Our conclusion that the standard is feasible and practicable is supported by experiences of the States that had covered nonmanufacturing sectors prior to the promulgation of the expanded standard. Enforcement data that we have at our disposal indicate that a large percentage of inspected employers were, in fact, in compliance in those States that had expanded the scope of the standard before Federal OSHA did.

Despite the demonstrated ability, we think, of employers to comply generally with the standard, we understand that for many employers, the initial implementation effort could appear to be overwhelming. We certainly recognize that employers, and particularly small business employers, who do bear the brunt of this standard, may need assistance in complying with the standard.

What I would like to do is describe some of the private-sector initiatives and some of our initiatives, some of which have been mentioned, but I think some of which have not been mentioned, and close with a description of what we are doing and what the private sector is doing in a very shorthand form.

There have been many private-sector initiatives to help employers implement the requirements of the rule. In fact, there is a virtual cottage industry of small business consultants marketing a variety of materials to help employers manage chemical inventories, prepare and maintain labels and MSDS's, conduct training programs and provide a myriad of other related services. A list of those resources has been compiled and while OSHA does not recommend or endorse any particular product, we have made this list available to employers who request information about private-sector materials.

As you have heard, trade associations and professional organizations have developed many compliance assistance materials that are particularly useful because they generally are designed for specific industries, to provide guidance for employers in a particular line of business.

OSHA also provides assistance to employers in complying with the rule in a wide variety of ways. When the expanded standard was published in August 1987, we published an explanatory booklet, Chemical Hazard Communication, and copies of that updated booklet have been provided to the chairman and to the rest of the subcommittee.

Currently, 258,000 copies of this booklet have been distributed at no cost, and by the way, the booklet clearly indicates that anybody can reproduce this at no charge and there is no proprietary interest——

Chairman SISISKY. How did you distribute it? I hate to interrupt you, but how did you distribute it?

Mr. WHITE. In a wide variety of ways. We sent the document to employer groups, to union groups, to trade associations, and to anybody who has requested assistance.

We have also distributed nearly 300,000 copies of the 1983 and the 1987 standard.

OSHA has also designated what we call a Hazard Communication Coordinator in each of our 10 regional offices to try to ensure a uniform approach to implementation of the rule to facilitate response to public inquiries and to provide a resource for workshops, seminars, and similar efforts.

The last witness from SBA mentioned the possibility of OSHA establishing an ombudsman. While the Hazard Communication Coordinator isn't designed to be an ombudsman in the true sense of the word, it does provide 10 focal points throughout the country for inquiries, for requests and for interpretations of the standard.

In addition, agency staff has responded to literally thousands of telephone inquiries and hundreds of letters and participated in countless meetings. We try to respond to every request, to go out and explain and describe the standard.

Virtually all speeches delivered by key agency officials discuss the Hazard Communication Standard in order to preach the gospel, to indicate the importance of this rule and to try to describe basically what it requires.

In addition, when OSHA, on August 8, published the Notice of Proposed Rulemaking to modify the Hazard Communication Standard, we also published a nonmandatory appendix at the back of the proposed rule in order to respond to those who said, "We need some simplified guidance on how to comply with this rule." We do have this—it is in Federal Register print, so you can hardly read it, but it is a readable document. It is truly a document that is designed for employers to be able to read and understand.

If SBA wants some items to distribute, both our booklet and this appendix, for example, would be excellent sources of information, I think.

Chairman SISISKY. You said that was in the Federal Register?

Mr. WHITE. It was in the Federal Register, and as I say, it can be distributed. I see your look of skepticism and I understand that dis-

semination of the Federal Register is not a best seller among the small business community, but there is, I think, useful and valuable information available. I think one question that deserves attention is, "Is it being disseminated wisely enough?" That is a fair question and I am sure we will discuss that.

In addition, the agency has developed the hazard communication compliance kit that also offers a step-by-step approach, including a sample hazard communication program, a sample training kit, and list of sources, which is available from the Government Printing Office for $18. We have supplied it to the subcommittee free of charge.

Chairman SISISKY. Thank you.

Mr. WHITE. OSHA has other compliance assistance programs. I think this one I am about to mention is of significance and I think it has been overlooked in statements, although I think the AFL-CIO, in its statement, mentioned it.

We have an on-site consultation program. These are agency-funded State consultants who offer free on-site consultation services to employers upon request, with the top priority going to small business. So these consultation programs are designed to assist small business.

In the back of that pamphlet, there is a list of phone numbers of our consultation project managers on page 11 and 12 of the booklet. Since the Hazard Communication Standard went into effect in the manufacturing sector in 1986, State consultants have visited approximately 75,000 workplaces. These consultants are prepared upon request to assist any employer who needs advice on how to comply with the standard.

We did a brief survey of the 16,000 site visits that we completed through this consultation program in the first 9 or 10 months of fiscal year 1988. Approximately 12,000 of those visits, or about three-quarters, included assistance on hazard communication, on establishing a program and advice on a program. This service is available to small business at no charge and I think could serve a very valuable purpose for individuals.

In addition, training and education, a requirement of the standard, is an essential element of any successful employer occupational safety and health program. OSHA has assisted in the development of safety and health expertise in unions and employer organizations through its New Directions education and training grants. Several of the organizations now receiving New Directions grants are using the funds to develop programs and instruct their members about the Hazard Communication Standard. For example, the American Electronics Association has a grant and has developed such a program.

In closing, Mr. Chairman, the Hazard Communication Standard has been regarded by occupational safety and health professionals as the most significant rule probably ever promulgated by OSHA. It is a generic standard. It applies across the board to all workplaces. It has a performance-oriented approach and we can talk a little bit about whether that may not be part of the problem and will result in millions of American workers receiving necessary information about the hazards they are exposed to at work.

We recognize the responsibility to assist employers, particularly small business employers, in understanding the rule. Consequently, in addition to the considerable private-sector resources that are available, we have offered numerous sources of assistance. OSHA's employees, on a call to any one of our 97 area offices, will make every effort to explain the standard and provide assistance.

That summarizes my remarks, Mr. Chairman, and I will be happy to answer any questions.

[Mr. White's statement may be found in the appendix.]

Chairman SISISKY. Thank you very much.

I might add, because of the timeframe, Mr. White, I have prepared almost 20 questions that I am not going to ask you. I am going to ask you some other ones when my time comes, but I would hope that you would write back the answers. I think they are pertinent in nature, if you will. We will submit that to you by letter.

Mr. WHITE. We would be pleased to respond to those in writing.

Chairman SISISKY. Thank you.

Mr. IRELAND. Mr. Chairman, we will filter some questions in to join yours.

What are the penalties for a business not complying?

Mr. WHITE. The penalties range from a citation for what is known as a de minimis violation, which basically means you are technically in noncompliance but there is no penalty attached, anywhere up to a citation for a willful violation of the standard, which calls for a penalty of up to $10,000.

Mr. IRELAND. You mentioned that Ms. Silk was deep in the technicalities of this, and maybe this is a technical question, so I would ask—when the court moved these regulations beyond manufacturers to cover all businesses, the court very clearly said that there should be a standard developed. Now, you have made mention that so much energy went into working this out and everything else and yet, apparently zero energy went into moving from just manufacturers to everybody else because you put out the same rule.

What kind of analysis did you do to determine that what was great for manufacturers was going to be great for everybody else and what kind of so-called energy was used for that?

Mr. WHITE. Let me take a stab at that, Congressman.

The court essentially said to expand this standard to the nonmanufacturing sector unless it is not feasible. Feasible in OSHA lore and law has a technical meaning. It means, is it capable of being done? Can the nonmanufacturing sector do this?

So the court gave us, frankly, a very narrow mandate. They said, "If this standard is good enough for the manufacturing sector, we think it is good enough for the nonmanufacturing"——

Mr. IRELAND. The court didn't say they thought it was good——

Mr. WHITE. I think the court did say that. That is our interpretation of what the court said. However, we did attempt to review what record we had in front of us at the time and, as you are aware, the court ultimately did not permit us to go through a rulemaking and to gather evidence with specific reference to the nonmanufacturing sector before we issued the rule.

Mr. IRELAND. But Regulatory Flexibility would have required that you do that.

Chairman SISISKY. You said it didn't permit you to do that?

Mr. WHITE. The court did not permit us to go through an additional rulemaking to gather evidence from the nonmanufacturing sector. It basically said to expand it and expand it now.

Mr. IRELAND. You could have used Regulatory Flexibility rules.

Mr. WHITE. Again, we evaluated the costs; we evaluated the benefits of the rule and made a determination that within the narrow scope of what the court told us to do, that the standard was capable of being complied with. Now, we did make some modifications in the rule to try to accommodate some of what we thought, based on very limited evidence, were appropriate or necessary to accommodate nonmanufacturing sector concerns. But you are right. Basically we expanded the rule as we promulgated it to the manufacturing sector, based on our understanding of the court's mandate.

Mr. IRELAND. Somewhere in your philosophy, it seems to be different from the philosophy of others. We have had the example cited by numbers of the Immigration Act which is—before this hit the fan, was probably the greatest example of the Government saying, "OK, we're incapable of regulating this and we'll get the good old American business community to carry it out," and so they said, "You, as an employer, have these duties to do," and they came out with videotapes, danced around the may pole with all kinds of things until everybody knew about it.

You have taken a very different tact, as shown by your testimony here, of saying, "Hey, it's the private sector's job to do that." You cited the Federal Register and trade associations, apparently quite unmindful that not all employers are members of trade associations or read the Federal Register, but the whole idea that it is, all of a sudden to carry out your regulations and to have notice of those regulations, it is all of a sudden the business community's and the private sector's job to do that.

What are all those OSHA people supposed to be doing out there?

Mr. WHITE. I tried to——

Mr. IRELAND. I mean, it is so callous—for an organization that has people theoretically in the field, in businesses, to know as little about it as they do and as little about the real world is appalling.

Mr. WHITE. I don't think I would subscribe to some of your characterizations, Mr. Congressman. Our people are, as vigorously as they can, trying to—people out there in the field who deal with business community every day on a wide variety of issues are trying——

Mr. IRELAND. Let me ask you——

Mr. WHITE. You are not letting me answer the question, sir—are really trying to provide information. Maybe we haven't done it in the most effective way we could. Maybe we should have had a broader mass mailing to more employers, but I can assure you that OSHA's people, OSHA's employees, are working very hard to try to make this standard known in the best way they know how, and that we have established programs and we have appointed individuals in the Regional Offices to coordinate that effort.

As I indicated, we have found that—remember, over half of the employees that we are talking about here have been covered prior to the OSHA standard; so there has been coverage for a large part of the sector.

There is much work to be done, obviously. Maybe we underestimated, as we sometimes do, the magnitude and the sweep of this rule. We were under some constraints, as you know, by the courts to get the rule in effect.

Mr. IRELAND. That is what is really appalling, to work 100 percent of your bureaucratic life in this field of contacting employers of all sizes and then have you tell us that maybe you have underestimated.

But I venture to say, if you and I walked down the street here, that if knocked on every door of a business going down Pennsylvania Avenue, I bet we would walk quite a few miles before we found one that had been touched by your outreach program.

But that is neither here nor there. I wish you would comment on a 6-page Material Safety Data Sheet from Hoffman-LaRoche, and they are so proud of it, they have had it copyrighted. It starts out that the chemical name is amino sulfono—well, it goes on. It has a number I can read, but the paragraph—in its description, there are a couple of words I can read in here called bottle and maybe teledose or something like that. The clinical indication is that it is a diaretic. "The biological activity and toxicological class affects fluid balance and electrolyte levels, do not inhale." I got that part. Environmental hazard caution, dust explosion hazard.

This thing goes on and on and our testimony is that people in the workplace who are supposed to be trained as a basis for these wonderful sheets that you want distributed aren't trained at a level to do this. I have a brother who is a Ph.D. organic chemist and I don't understand him and I don't understand this.

That is an example. I am sure you were here when you heard the example of Pepto-Bismol. What in the world can you do? That is not what is the issue. What is at issue here is the way you have gone about it.

This does not speak well for OSHA, this kind of stuff. These people are complying——

Mr. WHITE. Here is a nice 1-page material safety data sheet that has some of the same scientific jargon in it, indeed, but I think it is probably a much more readable document than yours. There is no doubt that there is variation among industry in the quality, readability, and understandability of material safety data sheets.

We don't intend that every employee be able to read every word and understand it, but there are certain key things that should be contained in MSDS's and some of which you mentioned—"Do Not Inhale"—that is pretty understandable—that we think are important for employees to have available to them.

If they show signs and symptoms of some problem and they don't know what it is, they can take this perhaps to their physician and say, "I am exposed to this stuff and I've got these problems. Is this maybe causing it?"

Our view was, with respect to the promulgation of the original standard—and let's be clear, the original standard, while it covered manufacturing, also covers a lot of small businesses. A lot of small businesses.

Chairman SISISKY. Mr. White, let me just interrupt you now. Both Mr. Ireland and I serve on the Armed Services Committee. I don't want to be unkind when I say this—but in the the military

we always ask for the background of our line officers, because we are dealing with a $300 billion budget.

Ms. Silk, have either one of you ever operated a small business? Have any of the people that are promulgating the rules at OSHA on this standard ever worked in the small business field?

I am not talking about five employees, but any amount? Have you ever worked in that field?

Mr. WHITE. I have not, Mr. Chairman.

Chairman SISISKY. You see, what I am really driving at—again, I want to apologize because I am not being unkind when I ask this question, but there is a whole different world when you must meet a payroll. My background is from a small business that grew into a fairly large business and I deal now with a tremendous amount of minority businesses in my district.

Forty percent of my constituents are minority, so I have to deal with the issue of complex regulations. It is absolutely unbelievable, we talk about somebody being able to read those regulations. Somebody being able to follow these instructions—it is extremely difficult.

I know that it is not easy to run a business and nobody is guaranteed a profit. Ultimately the employee is responsible for a safe workplace. No one is going to argue that point in this room today. But you stated that a large percentage of inspected employers in States that covered the nonmanufacturing sector prior to OSHA's coverage of that sector were in compliance with the State regulations. I assume you have concluded that the Federal OSHA standard is clearly feasible. Am I correct so far? Based on what I just said about the States?

Mr. WHITE. That was a large part of our evaluation, yes.

Chairman SISISKY. Would you like to discuss this evidence and to provide for the record data on the extent to which employers complied with State hazard communications regulations? What are the most important differences, and there are differences, as I understand it, between State regulations and the OSHA standards at the present time?

Mr. WHITE. We can certainly provide you much of that information, and yes, there are differences, but as I also indicated, essentially the experiences of the States were to rely on the same kinds of information sources, labels, MSDS's. So there may be differences and they may be differences that make it easier to comply with those, but I think on the basic issue, which Mr. Ireland is addressing, of the usability of the MSDS's, those systems as well relied in large part on MSDS's. But we will provide you with that information.

[The information may be found in the appendix.]

Chairman SISISKY. Did some of the States let them use labeling on the containers?

Mr. WHITE. The States, yes. The States did have and do have labeling provisions.

Chairman SISISKY. Isn't there a big difference between——

Mr. WHITE. But again, not as the sole means of communication. Again, the basic components of labeling and backup information, largely through MSDS's, are a basic part of most of those programs, even prior to the promulgation.

We didn't make this up, Mr. Chairman. We didn't sit around and think up how we can come up with a brand new system for informing workers about hazards. We relied on a great deal of work that had been done in the industry, that had been considered by health professionals and was evolving in industry over a period of years.

Chairman SISISKY. That is interesting. What have been the major problems that employers have experienced with compliance and do these problems differ in degree between large and small employers? Do you have any data on that?

Mr. WHITE. It is very difficult for us to break down the data between large and small employers——

Chairman SISISKY. You said that you didn't do it in a vacuum. You did it based on——

Mr. WHITE. We evaluated what we thought was the impact on small employers versus large employers, based on what we thought would be out there in the workplace; that is, how many MSDS's would be required, what kind of training would be required. But we were anticipating and we were projecting and there has been some discussion about disagreement about whether the impact is X number of million dollars or more or less. But we did the best we could to try to project that data.

We do have some information about the inspection history with respect to small versus large employers. It is limited data because we have only been enforcing in this sector for the last month.

I would suggest to you that it is probably not very valid or valuable data at this point. As limited as it is, though, it seems to show, as does data with respect to the nonmanufacturing sector experience prior to—in States where it was in effect prior to OSHA standards—that there is basically the same rate of compliance for small employers—and that is from 1 to 50; we don't break it down further—as there is for large employers.

There is basically no radical, dramatic, difference between the rate of compliance for small and large employers.

Chairman SISISKY. You are going to submit that for the record; am I correct?

Mr. WHITE. Yes.

Chairman SISISKY. OK, what has been the major problem since you have——

Mr. WHITE. Frankly, the major problem is, I think, the one Mr. Ireland identified and that is having a program at all. The first shot out of the box is for the employer to know about the standard and to do something. Often when we walk into an establishment for the first time, the basic problem is that the employer is just not aware enough about the standard, if at all, to have any program in place.

Once informed of the standard and once the employer has made a good-faith effort to put it in place, the problems are all over the lot. There are problems with insufficient labeling and there are problems with inadequate MSDS's, so you can't really identify a major problem once the standard is put in place by an employer.

Chairman SISISKY. When you give me the answer to the other question, would you list the major problems so we will have——

Mr. WHITE. Yes; we can——

Chairman SISISKY. You know, as you assemble from it.

[The information may be found in the appendix.]

Chairman SISISKY. I have some more, but you go ahead now.

Mr. IRELAND. I have just one more. I have before me the judge's decision that we were referring to before and I would read to you: It says:

> Thus, we can issue orders necessary or appropriate to the enforcement of our prior judgment. Exercising the powers conferred by both statutes, we will direct that the Secretary shall, within 60 days of the date of our order, publish in the Federal Register a Hazard Communication Standard applicable to all workers covered by OSHA, including those which have not been covered in the Hazard Communication Standard as presently written or a statement of reasons why, on the basis of present administrative record, a Hazard Communication Standard is not feasible.

Now, if that says use the same standard, I am in real trouble because I don't think you can construe that as using the same standard at all.

I would say that you put the same thing, without thought, without activity—you crammed the same standard out that has caused the problems for the reasons we are having this hearing—after you complied with that, you got a letter from the SBA, some 35 pages, on the issues.

Now, however, OSHA has complied, strangely enough, with the court's order and is free to engage in further rulemaking to improve the standard and to cure the legal defects which may make it vulnerable to challenge.

Forgetting the legal defects, which are certainly important, why, can you tell us, that you interpreted this language here that is very clear—it is the clearest thing we have had up here today—to say that you had to cram that same standard down everybody's throat and then once it was done, why didn't you, knowing—I mean, you had to have been quickly knowledgeable of the kind of silly results of your rule that we heard today—why didn't you start doing something about that, particularly when you have a regulatory flexibility statute out there that admonishes you to make a good-faith effort to keep the same goals, but to help different-sized entities comply with them? Can you untangle some of that?

Mr. WHITE. I will do my best. I don't know if I will satisfy your concerns, but once the court issued its original order to expand the standard, we initiated what we hoped would be a rulemaking process to gather comments to expand the standard. We wanted to comply with the order.

We put out an Advance Notice of Proposed Rulemaking and asked the public for comments. How do we do this? We got many, many comments. We talked to our various advisory committees about how we expand the standard.

We started to go through a process which would hopefully end up, after full notice and comment in public hearings, with a standard that would apply to the nonmanufacturing sector.

The court then cut us short and didn't permit us to finish that process. But in the time that we did have, frankly, the comments were—and the advice from the advisory committees was——

Chairman SISISKY. Excuse me, who are the advisory committees? Who are the members?

Mr. WHITE [continuing]. The Construction Advisory Committee and the National Advisory Committee on Occupational Safety and Health.

Chairman SISISKY. Is that made up of small business people?

Mr. WHITE. It is made up of representatives from a variety of segments of industry. I can tell you that the Construction Advisory Committee certainly has members on it, representatives of small business.

Chairman SISISKY. OK.

Mr. WHITE. Essentially, the advice was, and the comments were that the standard, as promulgated from manufacturing had the basic components necessary and appropriate for the nonmanufacturing sector. Nobody said, "Whoa, you've got to take a whole different approach here." I won't say nobody said that. I would probably be proven wrong, but by and large, the commenters and the advisory committees said, "We think that you can expand this standard. Perhaps"——

Mr. IRELAND. Wait a minute, stop right there. The court did not say, "Expand the standard." This court says, "Come up with a standard," so when you—that is disinformation you are putting out there and we don't need that.

Mr. WHITE. But what I am saying——

Mr. IRELAND. It said, "Come up with a standard."

Mr. WHITE. And we——

Mr. IRELAND. Not "Expand the standard."

Mr. WHITE. We asked the public how we should do that. Essentially——

Mr. IRELAND. You got no ideas from the public and these advisory groups at all? You just took it and said, "That's nothing"—you didn't even change it a little bit.

Mr. WHITE. We did change it. I indicated that we did change it a little bit, but that the basic advice from the public and from the advisory committees was that the components of the standard as it existed were applicable and appropriate to the nonmanufacturing sector. That was the advice we got in the time we had to listen to that advice.

Mr. SISISKY. May I ask you—by the way, let me interrupt you—would you send this committee a list of your Advisory Committee and their occupation, who they are associated with? I would appreciate that, if you could.

Mr. WHITE. Who were there at the time? Were on the Advisory Committee at the time?

Chairman SISISKY. No; I want the——

Mr. WHITE. The membership changes is all I am saying.

Chairman SISISKY. Oh, yes, at the time. That is correct.

Mr. WHITE. Sure.

Chairman SISISKY. I would like to have that.

Mr. WHITE. I would be pleased to do that.

[The information may be found in the appendix.]

Mr. WHITE. As I say, we had to shorten rulemaking due to the intervention of the court, but in the time we had——

Mr. IRELAND. Don't forget, you told us that you spent a lot of energy coming up with the first rule that should have told you something about small businesses. You already have said that

there are small manufacturing businesses and things like that and you have other things, other regulations that—somewhere there ought to be some mentality in that bureaucracy of yours that says, "This might be different for small business," even if it is a 24-hour time period you got. But you didn't even respond to that.

Mr. WHITE. I guess I could submit the comments and the transcripts of the Advisory Committee to you to look at to see what you think the public said, but our view was that the public basically supported the applicability of the current standard——

Mr. IRELAND. You don't have any——

Mr. WHITE. [continuing.] To the nonmanufacturing sector.

Mr. IRELAND. [continuing.] Indigenous mentality that thinks and projects? You get these people out there calling on small businesses for other things. You don't have any inside knowledge of how things might affect small business, and you have done other regulatory flexibility things.

Mr. WHITE. That is right, and we were——

Mr. IRELAND. How can you just say, "Oh, we got an Advisory Committee," and blame it on them?

Mr. WHITE. No; we rely on the comments we get from the public. That is what the statute says to do. It says, you base your standards on the information you receive through the rulemaking process. Don't make it up yourself. Don't sit in the back room and figure out how to do these things, but rely on the comments and the information and the data that you receive from the public.

Chairman SISISKY. When does the Paperwork Reduction Act come into this? Did that come in anywhere?

Mr. WHITE. That is a whole separate story, Mr. Chairman. When we—we are required by law——

Chairman SISISKY. I mean, it is the same administration.

Mr. WHITE. We are required to have our rules reviewed under the Paperwork Reduction Act by the Office of Management and Budget and we submit all our rules to OMB for them to review under the Paperwork Reduction Act and we did that. We did that here on more than one occasion since we have had more than one rulemaking. They disagreed with some of our provisions and those provisions are now undergoing additional rulemaking.

But by and large, OMB, under the Paperwork Reduction Act, endorsed or approved our standard under the——

Chairman SISISKY. OMB endorsed your standard. You are making that definitive statement?

Mr. WHITE. They approved the standard except for three provisions——

Chairman SISISKY. I don't want to get into court cases. Is OMB part of the litigation?

Mr. WHITE. Not directly.

Chairman SISISKY. Yes; but——

Mr. WHITE. They have an interest in the litigation.

Chairman SISISKY. Something is happening here I don't understand. I am not an attorney, but there is something that is——

Mr. WHITE. They have an interest in the——

Chairman SISISKY. I will have to review the testimony here. Go ahead.

Mr. IRELAND. You have laid upon us this great world that all the advisors and everybody else came in and said, "Well, there is no problem. We will do that."

You have a letter dated October 23, 1987, from which—or prior to that, you got word from the SBA about what some of the problems were in there. That didn't count?

Mr. WHITE. Yes; it did count, and——

Mr. IRELAND. You didn't do anything but put the same thing out and then on February 11, 1988, you got a further letter from the SBA that is quite understandable, where the problems are, so I find it hard to believe that between paperwork and all these other things and the experience and knowledge of the workplace that theoretically you all have, that you didn't realize the mess that you were putting people in, trying to accomplish something that everybody wants to accomplish. I mean, it is a failure.

Mr. WHITE. We don't think it is a failure. There may be problems. There may be problems with communication. There may be problems with interpretation. There are always those problems when OSHA issues a standard or any agency issues a standard.

I don't disagree that—with the broad sweep of this standard and the broad impact of this standard, that the problems may be more pronounced than usual. We need to try to move forward, I think, from here to try to deal with those problems by trying to disseminate some of this information that——

Mr. IRELAND. Would you hazard a guess what percentage of the people that you are supposed to be covering with this actually know about this? I mean, you have told us that most of the times when you go in, they don't know anything about it. What percentage of people do you think know?

Mr. WHITE. I wouldn't hazard a guess. I am hopeful that a substantial percentage are familiar, or at least know about the standard. That will grow as time goes on.

Mr. IRELAND. Whose responsibility do you think it is to know that? About the standard? Whose responsibility is it to see that that comes off?

Mr. WHITE. It is everybody's responsibility. It is certainly the employer's responsibility to learn about his or her obligations under the law. It is employee groups and it is OSHA's. I am not trying to shirk our responsibility for making sure that people know about the standard.

I am willing to entertain ways that we can improve that communication. I am not here to tell you that everything that OSHA is doing—that we have done a fully adequate effort. I am certainly not here to tell you that, and I am happy to listen to the advice of the committee about how we can do a better job.

Chairman SISISKY. I can tell you one way, Mr. White. I have to be very honest with you.

I sold my business 2 years ago, so I can talk about it now. I used to be in the soft drink business. When I started the business I drove a truck, and delivered the product, but, as the business grew I was restricted to a lot of paper shuffling, filling out papers and things like that.

One thing I learned, though, if you want to find out what is really happening, you go out into a marketplace. I said, "I will do

the shopping for my family, to pick out different stores every week."

Have you gone into the marketplace to just talk to people? I mean, just to ask how businesses are adjusting to this standard? For the last month, I have been asking people, "What do you know about this standard?" They reply "I don't know what you're talking about."

I asked a group yesterday from the Hampton Roads Chamber. They did not know about the standard. The surprising thing, this brochure was issued by the same group. There were 80 business people and they were talking about mandated programs required in the Federal Government.

They were picking on me as a Democrat, but that is all right. So I picked on them. I said, "What do you know about this standard? Does anybody know about it?"

I swear to you, one hand went up. I said, "Well, you'd better know about it because it is going to affect you more than probably anything that you've got in your business."

That is what you need to do. We, as bureaucrats—I consider myself one—because I am elected. I too have to communicate with my constituents and so do you. Let's get down to the nitty-gritty.

What kind of products and substances, for example, as you see it now, would be covered by the Hazard Communication Standard in a small restaurant, hardware store, florist shop, auto garage, and I could go on——

Mr. WHITE. I can tell you one that is not, Mr. Chairman, and that is Pepto-Bismol.

Chairman SISISKY. That is strange. I just heard this morning—that the reason that Procter & Gamble developed an MSDS for Pepto-Bismol is the fear of a lawsuit and the liability problem.

What I am telling you is that if a company like Procter & Gamble—and I guarantee you that their legal counsel says, "Protect yourself under this law." If they are concerned, then the pharmaceutical supplier is also going to cover himself; the storekeepers will too, then we have a whole lot of paper. I mean, it is just going to be unbelievable. All I am asking for is we should have definitive types of things.

I raised the issue—I don't know if you were in here this morning——

Mr. WHITE. I didn't hear the other testimony.

Chairman SISISKY [continuing]. About labeling. Why would you need to do an MSDS if the information is already on the label?

If that is the case, consider females who are working because they have to. They have to keep a house, so if they have a good enough job, they will hire a day worker to come in. On that basis, is the day worker in a home covered, because you said, from one employee up. Would the homemaker have to do an MSDS?

I know you wouldn't be checking in the home, but if somebody was pouring Comet and got it in their eyes and made a complaint to OSHA, you would have to check them out, wouldn't you?

Mr. WHITE. Again——

Chairman SISISKY. I didn't dream—I mean, nobody provided——

Mr. IRELAND. You don't understand. People yell for——

Chairman SISISKY. I am not trying to be obstreperous, but it just dawned on me.

Mr. WHITE. Let me answer in two ways. I think that you are right, and I talked to one of your earlier witnesses during the recess, that suppliers and producers are providing this flood of paper, these MSDS's, for products which aren't covered by the standard. They are doing it for a variety of reasons, presumably legitimate, and the distributors then get this flood of stuff and they don't select out, either, perhaps for liability concerns, what they are going to pass on to their retailers.

So what happens is that the guy at the end of the line gets all this stuff even though he may not need half of it because it is not covered by the standard. I understand that concern. I think I can understand it better now than I did before——

Chairman SISISKY. Do you have a list that says you do not have to——

Mr. WHITE. We have a list of exemptions and exceptions from the standard that the employer can look at and say:

If it's a food, drug, or cosmetic in a retail establishment packaged for sale to consumers, I don't have to worry about it—Pepto-Bismol—if it is a food, drug, or cosmetic intended for personal consumption by employees while on the workplace, I don't have to worry about that.

There is a list of exemptions——

Chairman SISISKY. Let me ask. If I am running a small restaurant, very small. I am working 7 days a week and I said, "You know, the best pickles in the world would be in a barrel and not in a jar." Do I have to have an MSDS for that barrel of pickles? I mean, vinegar in large amounts is a hazardous chemical?

You see these are questions going through people's minds now. Somewhere, we have to make a definitive ruling and say, "OK, this is this and that is that, and we want to help the employees," but we don't want to drive the small business person up a tree. He is going to be faced with a $10,000 fine. You and I know that most Federal employees are good and honorable people, but they are no different from anybody else. There are always some incompetent people in the system. I worry about erratic and overinspection and I am really concerned that we are not being definitive enough. That is why I am raising these issues, not to be funny, but——

Mr. WHITE. Ms. Seminario, I think, highlighted what part of the problem is here. It is a problem which I think the Federal Government and regulators in general haven't really resolved, and that is, is it better to have—I mean, this standard is pretty short in the scheme of things. It is 10 or so Federal Register pages long. We could have made it a lot longer and tried to have a list, which would have had to be updated, I am sure, based on new science, of 5,000 things that were or weren't covered and said exactly when you cover what, when.

I can guarantee it would have been a 5,000-page standard instead of a 10-page standard.

Chairman SISISKY. That may be better.

Mr. WHITE. But it is the philosophy of this administration—and I think in trying to draft a regulation that is this broad——

Mr. IRELAND. Don't lay that one on this administration.

Mr. WHITE. I will and I will say it again——

Mr. IRELAND. What I want is the chairman to realize that you have to have a training program to get your employees so that if something spills, they don't shout, "Let me see the label, it is an emergency." They have to say, "Let me see the MSDS." You have to remember that.

Mr. WHITE. My point is that this is a performance standard. It says, "Here is what you've got to do." It doesn't tell them exactly how to do it.

I think that does cause some problems because it does create the reaction of the employer saying, "OK, you gave me what I wanted. You gave me a performance standard that I can adapt to my workplace. Now tell me what it means." So you end up sort of going around in a circle.

Chairman SISISKY. By the way, is there a reason the Congress wasn't included in this regulation? Are we excluded from everything unless we absolutely——

Mr. WHITE. You are fortunate enough to be excluded by law. There have been suggestions that you all ought to be covered.

Chairman SISISKY. I think we ought to. There is a vote on. Do you have any more questions?

Mr. IRELAND. No.

Chairman SISISKY. Mr. White, I do appreciate you coming here. Sometimes we get a little emotional, as you could almost guess, but I am sure you go through this every day of your life.

I want you to know we appreciate you being here. We understand your dilemma, but I am telling you, we have a dilemma too and I want you to understand that I don't intend to have one meeting and let up on this——

Mr. WHITE. That is good.

Chairman SISISKY [continuing]. Because we are going to change this regulation. We are not the committee of jurisdiction, but we are the committee of jurisdiction for small business. We are going to keep examining this issue and hopefully can come to some agreement that will benefit the employee, without hurting small business.

Thank you so much and I thank all of you for attending the hearing.

The hearing is now adjourned.

[Whereupon, at 1 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

JAMES H. BILBRAY
1st District, Nevada

COMMITTEE ON
FOREIGN AFFAIRS

COMMITTEE ON
SMALL BUSINESS

SELECT COMMITTEE
ON AGING

1431 Longworth House Office Building
Washington, DC 20515
(202) 225-6905

DISTRICT OFFICE:
1701 W. Charleston, Suite 300
Las Vegas, NV 89102
(702) 477-7000

Congress of the United States
House of Representatives
Washington, DC 20515

CONGRESSMAN JAMES H. BILBRAY
OPENING STATEMENTS
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON EXPORTS, TOURISM, AND SPECIAL PROBLEMS

September 28, 1988

Mr. Chairman, I commend your active persuit of a solution to this problem that small businesses have with complying with the Hazardous Communication Standard.

In 1983, when the Standard was passed, it was designed for manufacturing companies. Now, without modification, it is being applied to non-manufacturers. It is our responsibility as Members of this Subcommittee to seek out solutions for the small business, non-manufacturers who are having trouble complying with the Hazardous Communication Standard.

There is no denying the necessity of implementing a standard by which all employees will be informed about hazardous chemicals in the workplace and their potential risks, but it must be implemented in such a way that all businesses can comply. Today we have the opportunity to hear from the S.B.A., O.S.H.A., the AFL-CIO, and small business men. Their testimony will lead us toward the solution of a Hazardous Communication Standard which is mutually feasible for both manufacturers and non-manufacturers.

Testimony of

THOMAS J. GODWIN, JR.

President

D & G Electric Company, Inc.
Birmingham, Alabama

on behalf of the

AMERICAN SUBCONTRACTORS ASSOCIATION
ASSOCIATED BUILDERS AND CONTRACTORS
NATIONAL ASSOCIATION OF HOME BUILDERS

on the

Implementation of the OSHA Hazard Communication Standard in the Small Business Community

before the

Subcommittee on Exports, Tourism, & Special Problems
Committee on Small Business
U.S. House of Representatives

September 28, 1988

American Subcontractors Association, Inc.
1004 Duke Street
Alexandria, Virginia 22314
(703) 684-3450

Associated Builders and Contractors, Inc.
729 15th Street, N.W.
Washington, D.C. 20005
(202) 637-8800

National Association of Home Builders, Inc.
15th and M Street, N.W.
Washington, D.C. 20005
(202) 822-0200

Statement of

THOMAS J. GODWIN, JR.

on behalf of the

AMERICAN SUBCONTRACTORS ASSOCIATION

ASSOCIATED BUILDERS AND CONTRACTORS

NATIONAL ASSOCIATION OF HOME BUILDERS

on

THE IMPLEMENTATION OF THE OSHA HAZARD COMMUNICATION STANDARD

IN THE SMALL BUSINESS COMMUNITY

Mr. Chairman, members of the subcommittee, my name is Thomas Godwin. I am president of D & G Electric Company, a family-owned electrical contracting firm in Birmingham, Alabama.

Today, I am representing the American Subcontractors Association, the Associated Builders and Contractors and the National Association of Home Builders. Together these three organizations represent nearly 200,000 of the nation's commercial, industrial and residential construction companies. Over 90 percent of these firms are small businesses.

First, let me say that none of the organizations I'm representing today are opposed to hazard communication. However, we do have significant problems with the way certain provisions of the OSHA Hazard Communication Standard are proposed to be applied to the construction industry and the lack of assistance and guidance which OSHA has provided to our industry as well as others.

To put it bluntly, Mr. Chairman, the current standard won't work in the construction industry.

It won't work because it will not accomplish what OSHA, employers and employees want it to do. It will not reduce the risk of injury caused by chemical health hazards on construction sites.

It won't work because OSHA scientists have written a vague, confusing, and cumbersome standard which OSHA officials themselves have trouble explaining, and which makes very little sense to the average small construction contractor who attempts to comply. I use the word "attempts" because no one knows for sure what compliance really means. OSHA has made little effort to inform employers directly of their responsibilities under the standard.

The Hazard Communication Standard is the most far-reaching and broad-based rule OSHA has ever issued. OSHA considers it to be the cornerstone of its mission in the workplace, yet the agency seems to be keeping it a secret from those it affects. The way it is right now, an employer will probably find out about the standard when he is asked by an OSHA inspector to produce compliance information for a standard he never heard of.

The simple fact that a federal agency can issue a single regulation affecting 4.5 million businesses employing 59 million people and have no system to inform employers is downright crazy. I think employers have a right to expect more than a simple notice in the Federal Register.

If we are going to protect the health and safety of the American workforce, don't we as employers have a right to know what we are supposed to do? How can the government justify handing out $10,000 fines to employers when the government made no effort to tell them about the standard?

When we had to comply with the new immigration law last year, the INS mounted an education campaign, took out ads in newspapers, produced videos, and sent information to every employer in the nation. And that was to make sure we filled out one form. OSHA is requiring us to write a company hazard communication program, collect Material Safety Data Sheets on all hazardous products, make sure the products are labeled correctly and then train all of our employees. Where are the ads? Where is the toll-free number? Where is the education assistance?

OSHA will tell you that they are working diligently with trade associations to get the word out to businesses. It's just not enough. Many associations are not even up to speed on this standard, and the ones that are get conflicting signals from OSHA. I can tell you that if every contractor who belongs to an association is informed and educated on this standard, which is very unlikely, you will still have over 50 percent of the construction industry that has absolutely no idea what's going on. And that's of grave concern to the 50 percent who are educated. Why?

Under this standard, construction contractors are not only responsible for educating and training their employees about the substances they are working with, they must also train their employees about the hazards other contractors are exposing them to. They must exchange Material Safety Data Sheets with other contractors. And they must provide additional information to their employees about labeling, protective gear, and emergency situations while working around other contractors. This sounds admirable and it may be desirable, but the way the rule's written demonstrates just how little OSHA really knows about the real world of construction.

As an electrical contractor, on any given jobsite my employees can come in contact with 10 to 20 other contractors, such as the masonry, waterproofing, grading, paving, drywall, ceiling, plumbing, mechanical, steel, flooring, sprinkler and tile contractors to name a few. None of us starts or finishes a job on the same day and employees are coming and going at all times during the project. Then I ask you to multiply that by the dozen or so jobs I may be working on at the same time. Where and how is this exchange of information going to take place? Who's going to teach me how to explain the chemical hazards of masonry to my employees? Where are these MSDSs going to be kept? Who's responsible for coordinating this exchange on worksites? No one has an answer for me, least of all OSHA.

OSHA officials think we're overreacting to the situation. In developing this standard for the non-manufacturing sector, OSHA estimated that as a specialty contractor, I would have an average of 12 hazardous substances and would spend a mere $169 in the first year of compliance. Mr. Chairman, $169 won't even cover the cost of xeroxing all the MSDSs I've received.

That brings me to the types and numbers of substances covered by this standard. In construction, it's not just things like carbon monoxide, lead and nitrogen. This standard covers any product which has a Material Safety Data Sheet, which means I must train my employees not to drink the copier toner in my Xerox machine, not to use too much hand cleaner because it may dry their skin, and not to eat wallpaper because it may give them constipation. This may sound comical, but this is what the standard requires of employers.

These MSDSs are not simple documents either. They are technical, complicated documents which can run up to 15 pages in length. They're written by and for scientists and health professionals, not the small businessperson who often has little more education than the employees he's supposed to train.

Under this standard, I'm supposed to know what products are covered when I get an MSDS from my supplier. OSHA has guaranteed this in the standard. Unfortunately my suppliers have been left in the dark by OSHA as well. Only the largest are aware of their responsibilities to the users of the product and some of

them have been selective in providing MSDSs to customers. They often complain they can't get the MSDS from the manufacturer who is responsible for creating it in the first place. There is no enforcement mechanism to make sure the end user of the product is going to get the information he needs to be in compliance with the standard.

Because of the lack of guidance from the agency, manufacturers are putting anything and everything on these MSDSs in order to satisfy OSHA. This is one of the reasons most MSDSs are so technical they cannot be understood by the average person. I'm supposed to get my training information from these MSDSs, but who's going to explain "specific gravity," "vapor pressure" and "Permissible Exposure Limits" to me?

People think that training consists of a simple warning to employees about what they're working with. Under this standard, I must train my employees about the physical and health hazards of the product, how to spot the hazard, what protective gear is needed, what to do in an emergency, and provide an explanation of my written company program. This wouldn't be that difficult if I only had the 12 hazardous substances OSHA said I should have. I've got over 100 MSDSs so far and that comes short in comparison to other contractors I know who have several hundred.

The system created by OSHA also threatens to create a liability timebomb for the unsuspecting small businessperson. Because OSHA hasn't informed him of his responsibilities, when an

employer receives an MSDS from a supplier and fails to train on that product or does it incorrectly, he automatically opens himself up to a liability lawsuit from an employee.

In addition, construction doesn't have a stable workforce. Construction has an annual turnover rate of 220 percent. We often hire people for one project or only a few days. Since OSHA doesn't allow employees to become certified in training, each employer has to train an employee every time he works for a new contractor. We will wind up training several times a week for hours on end.

I'm also here to warn about a whole new business which OSHA has indirectly created. It's called "Hazard Communication Consulting." There are a number of fly-by-night consultants popping up all over the country trying to cash in on this confusion OSHA has created by preying on the fears of small businesses. These consultants are offering compliance programs running into the thousands of dollars. Very often these programs don't even meet the most basic requirements of the standard. There are some very good private consultants out there, but the small businessperson has no way of knowing the good from the bad. Again, OSHA is not helping out.

In the last two weeks, OSHA finally announced that it had developed a compliance assistance package for employers. This came nearly a year after it was ordered to do so by the Office of Management and Budget. And the only way you'd know it was

available is if you receive the Department of Labor's press releases. Unfortunately, you cannot buy it in any government bookstore. You must order it over the telephone and then wait six to eight weeks for delivery. Somehow I doubt that OSHA would except this as an excuse during an inspection.

Let me once again emphasize that we are not arguing against hazard communication. What we are saying is hazard communication will only work if there is planning, education and a reasonable application to the industries affected. OSHA needs to make an attempt to inform all employers through the mail and the media. They need to establish a toll-free hotline to answer compliance questions. They need to recognize in the provisions of the standard how different industries operate. They need to develop and enforce a standard system of Material Safety Data Sheets on legitimately hazardous products. And they need to do a special outreach to the millions of small businesses who have been left in the dark.

Without an attempt to solve these problems, the Hazard Communication Standard will not protect workers and it will crush many small businesses. OSHA owes as much to the American workforce and to the small business community.

Thank you, Mr. Chairman.

SOCIETY OF AMERICAN FLORISTS

TESTIMONY

BEFORE THE HOUSE SMALL BUSINESS SUBCOMMITTEE ON
EXPORTS, TOURISM AND SPECIAL PROBLEMS

WITNESSES

Norman White
of White's Nursery and
Greenhouses, Inc

accompanied by

Nancy Montgomery
of White's Nursery and
Greenhouses, Inc

Elaine Acevedo
Society of American
Florists

SOCIETY OF AMERICAN FLORISTS
1601 Duke Street
Alexandria, VA 22314 (703) 836-8700

My name is Norm White, and I'm a commercial flower grower from Chesapeake, Virginia. I appreciate the opportunity to appear before this Congressional Subcommittee this morning, to testify on behalf of the Society of American Florists.

The Society of American Florists is a trade association which represents the entire floral industry: growers, wholesalers, and retailers. I sit on the Board of SAF and I also serve on the Government Relations Committee.

I am here to talk to you about the floral industry's concern over to comply with OSHA's Hazard Communication Standard. This standard requires employers to train employees on the chemicals they come into contact with in the workplace. This is a subject that concerns me a great deal personally because I have more than 50 employees in my company, including three members of my immediate family. I want to assure you that I want my employees and my family to be able to protect themselves from exposure to anything that would be dangerous or harmful to their health.

Our company is progressive and growing. In fact, in April of this year we hired a new employee to work solely on public relations and advertising. However, because of the urgency for our company to comply with OSHA's Hazard Communication Standard, and because of her educational science background and industry experience, I asked my new employee to get my operation in compliance with the standard.

This has been much more difficult than we expected. To date, we have spent more than 300 man hours working solely on this requirement. Needless to say, my public relations and advertising project had to be put on hold. And to be honest with you, we still have no way of knowing whether or not we are in compliance as OSHA expects.

On September 20, 1988 we were visited by OSHA, who was checking on our compliance with the standard. They asked for our chemical inventory list, a copy of our written hazard communication and the MSDSs. We were able to provide all of these things. Yet, despite all of our best efforts, I still don't know if I am in compliance. We were told that if there are blank spaces in an MSDS, this should be taken as a signal to us that we do not have the most recent one. Also we were told that the standard requires us to have an eye wash fountain on the premises because some of the MSDSs state that if a chemical gets in your eye, then you have to flush the eye for at least fifteen minutes.

In fact this whole thing has been so time-consuming, confusing and stressful to us, I'd like to turn the microphone over to Nancy Montgomery, my Public Relations and Advertising

Director, now acting Safety Director. I would like for her to describe to you just some of the many problems we have encountered trying to get our company in compliance.

Thank you.

Congressman, before I get into the problems we have encountered because we're not sure how to comply, I'd like to begin by saying that it has been extremely difficult to simply obtain the information required by regulation.

For example, as required, I took an inventory of all of our chemicals used on the premises. It was the single most difficult part of compliance to obtain Material Safety Data Sheets for all of these chemicals because our suppliers had not been sending the information as was required as of last September. My inventory included a list of some 68 chemicals. By the way, the OSHA estimate for average number of chemicals on site for our industry was between 18 (for garden center) and 37 (for agricultural production center).

Because this regulation went into effect with no one sector of industry really knowing how to comply, our suppliers first informed me that I needed to get the MSDSs from the manufacturers. Most of them told us it was not their responsibility to supply us with these data sheets.

After repeated communication, finally, one supplier did send us the information. However, they sent their entire inventory of MSDS's, including chemicals we don't even use. After sifting through all of these 300 sheets to find those used at White's, I began to notice some discrepancies when I was cross-referencing them with those MSDSs included in a compliance kit marketed by a state trade association.

Because of the discrepancies, I realized there were two MSDSs for the same chemical, each with a different date. I chose the one with the more recent date, but then I wondered if there was an even more recent MSDS for that chemical. The standard requires the employer to retrain every time a new MSDS is developed and I did not want to have to retrain if a newer one finally arrived.

Therefore, I decided to call the manufacturer and used the telephone number given on both MSDS's, for this particular fungicide. I was told that company had been sold for a year and I should contact another firm. I phoned the next firm,, each time explaining what it was I wanted. No one understood what I was talking about when I requested the most recent MSDS.

Four phone calls and two and one-half hours later, I finally spoke with an individual who told me there was a more recent MSDS. I now have three different MSDSs for the same product. Bear in mind that I have 68 chemical products.

It has been a nightmare for the manufacturers in our industry as well. The distributors have stopped carrying smaller volume products like paint sprays (used by retail florists), rather than incur the cost of distributing MSDSs. One manufacturer of spray paints has estimated that it has to send out about three and one-half million pieces of paper to comply with this standard.

If these sheets are constantly changing, it will continue to be a very timely process involving a lot of paperwork and ongoing communication and new training for our employees.

The next problem I encountered, after I obtained the MSDS sheets was the actual training on how to read these sheets. They tend to be somewhat complicated and the standard requires us to train about every physical and health hazard listed on the MSDS. Training about flash points and specific density are so unusual and so remote to the daily working application that the employees tune out what you are saying.

Many products have MSDS's that say that the product is not hazardous if used according to manufacturers instructions. The dangers occur primarily because of misuse. It seems ironic to me that in many instances the MSDS does not state the proper personal protective equipment that is to be used with the chemical. In our industry, that means we have to go back and read the label.

Pesticide labels are carefully detailed and the Environmental Protection Agency requires certain things--like warnings and directions for use--to be on the labels. In fact, it is a criminal offense to use the product in any manner that is inconsistent with the labeling. I question why we have to keep MSDSs when the label is where we look to find out what to wear, how to mix, apply and handle a specific pesticides. I can assure you if there happens to be an emergency, the label is the most readily available place to look for emergency information. It takes far too long to look up the MSDS and figure out what it says.

The label would serve ideally to transmit proper precautions and directions for safe handling and applying of pesticides and EPA has thought so for many years now. The OSHA Hazard Communication Standard already requires that a label be on each chemical container, and it is automatically sent with each chemical order. If this standard could revolve around a label program rather than a separate data sheet, it would be a much more feasible standard.

Aside from the practical problems associated with compliance with this standard, the regulation itself is so unclear and ambiguous, we can't tell whether or not we are complying. We don't know which chemicals are covered, and we don't know which employees have to be trained because of a potential exposure. We are ending up training for every single chemical on premises, and

training every single employee, even those who will probably never be exposed to any dangers, simply on the chance that it might happen.

Our industry is particularly concerned because we don't know when consumer use, becomes industrial use. Under one interpretation of the standard, if a product is used more often or in greater strength than a consumer would use it, we have to train. Our industry uses chlorine bleach to clean out buckets for cut flowers and disinfect greenhouse aisles and benches. In some instances, this may be for as short as fifteen minutes at a time and the bleach is diluted. In other instances, we use the bleach in greater strengths and for longer periods of time.

Even the OSHA inspectors can't agree on what is covered and who must be trained. One of SAF's members in Maryland was told he had to train and warn for his employees use of household bleach twice a week, while another inspector in another state said the only chemicals she thought needed to be included were the pesticides used. In this instance, the heavier use of bleach was excused, while the lighter use was included under the standard. If OSHA isn't sure what is covered, how are we supposed to be?

One of our major concerns is whether or not we have to obtain MSDSs from our suppliers of cut flowers which have been treated with chemicals and may contain residues. We have asked this question of OSHA and been given conflicting answers. Can you imagine the nightmare scenario if we are required to obtain ten or twenty sheets with every stem of cut flower? Even one would create extreme hardships on the industry. Many of our flowers are imported. Under the standard, the importer would have to develop the MSDS and labels. That would certainly be a non-tariff barrier to trade. We need a definitive answer to this problem and to many others.

Under the standard, products containing hazardous materials are lumped together as though the hazardous exposure would always be at its maximum. Products such as our industry uses are used intermittently and not as a constant part of the work day. For instance, it is reasonable for a person spray-painting automobiles forty hours a week to observe the many precautions now mandated. But it is far less reasonable to expect a floral designer who is adding a touch of spray color to a wedding bouquet to be trained of the same hazards and observe the same precautions. There needs to be a workable distinction between constant exposure to significant dangers and occasional use of products containing hazardous materials.

Again, it has been extremely difficult to get any information needed for compliance. We believe OSHA should bear some of the burden for training employers in the proper way to train employees. Not all of the businesses in our industry can afford to hire an additional employee to get them in compliance. There are many smaller "mom and pop" small business owners in our

industry and I know many of them have no idea that this law applies to their operation much less how to go about getting in compliance. Many businesses are owned and run by immigrants who barely speak English, or by people who did not have the luxury of finishing high school. How will they comply with all of this?

We have many questions about what we are supposed to be doing. Everyone has a different interpretation and there are many fly-by-night companies who are taking advantage of the confusion and the desire of employers to comply. They are promising easy solutions for several hundred dollars. OSHA must establish some central information point where we can go to get the answers to questions.

Can't OSHA require all manufacturers to ship their MSDS to a central data bank maintained by OSHA? At least we would know where to get the information. If OSHA could become the repository for all MSDSs in the United States, employers would have an easier time obtaining them. Alternatively, this standard could be implemented and its goals met by using only the labels which accompany products. Employees can receive adequate warnings from labels and the standard does require all products to contain labels.

If the paperwork burdens associated with this standard could be lessened, and the warnings and training programs could be made less complicated, this standard would work and it would be a standard everyone could operate under. It makes good sense to be able to warn employees not to work without gloves because they may be exposed to chemicals which might cause allergic reactions in sensitive people. This does not require an MSDS which details every other known hazard for every conceivable misuse. It requires a label, and someone who has read the label and can make sure that every employee has also read it and understands the dangers.

Worker safety is a socially important goal. It is economically important too. No thoughtful business-person would jeopardize the health of any employee. However, there also ought to be an effective way to inform the workforce about hazardous materials that does not in itself generate vast quantities of paper.

OSHA's efforts ought to be directed towards creating regulations which make such cautionary information simple and direct. And since we all agree that it is a socially desirable goal to effectively protect employees, we need to have some type of partnership with government and with those who advocated the standard to begin with. There is no reason why the entire burden should fall on the employer.

Thank you.

Statement of the National Wholesale Druggists' Association

Statement of

Larry G. Olin, President
Humiston-Keeling Inc.

Before the

Subcommittee on Exports, Tourism, and Special Problems
Committee on Small Business
U. S. House of Representatives

September 28, 1988

NWDA

National Wholesale Druggists' Association
105 Oronoco Street • Alexandria Virginia • 703/684-6400
Mailing Address: P.O. Box 238 • Alexandria, VA 22313

Thank you Mr. Chairman, and Members of the Subcommittee, for providing my company an opportunity to discuss the problems the Hazard Communication Standard is presenting to my business in Calumet City, Illinois.

INTRODUCTION

My name is Larry G. Olin. I am President of Humiston-Keeling Inc. which is a privately held drug and health care product wholesale distribution business. We have one distribution center. Out of that one distribution center our 194 employees receive, inventory and distribute prescription and over-the-counter drugs, cosmetics and beauty aids and home health care products to approximately 200 hospitals, 600 independent retail pharmacies and 240 retail chain pharmacies and warehouses throughout Illinois, and parts of Michigan, Indiana and Wisconsin.

Our inventory consists of more than 25,000 different products. 15,000 of those products are prescription drug products. About 3,500 are over-the-counter products. The remaining 6,500 products consist of toiletries, sundries, durable medical equipment and home health care products.

18,500 of the products we inventory, i.e., prescription and over-the-counter drugs, are regulated by the federal Food & Drug Administration (FDA). FDA's regulations require significant testing for toxicity, effectiveness and safety of the product. Necessarily, FDA conaiders the health and safety of the pharmacists, physicians and other health professionals administering the drugs

as well as the safety for the patient receiving the drugs. Their effort, in conjunction with those of manufacturers, result in highly detailed and carefully regulated product labeling. The FDA labeling system is not limited to the paper applied to the bottle -- it includes an elaborate data sheet that is attached to each package of prescription drug product, referred to as a professional package insert.

SPECIAL PROTECTIVE MEASURES TAKEN BY HUMISTON-KEELING INC.

In our distribution center, we have established the following procedures for handling products which have been determined to be hazardous:

1. Management and shift supervisors have been trained in emergency health protocol by health care professionals.

2. All personnel have been instructed that in the case of breakage of any containers to immediately leave the area and contact their supervisor.

3. The return goods department personnel have been instructed not to open any container or package that appears to be broken or a leaker. The package is immediately put into specially marked disposal containers.

4. Supervisors have been supplied with protective garments, masks and gloves to use when cleaning up a spill or breakage.

5. Speciality disposal containers that have been developed for carcinogenics are available.

6. An emergency shower and eye wash basin have been installed, and the supervisors have been trained in proper use.

7. Telephone numbers posted include:

   a) Local ambulence service;

   b) St. Margaret Hospital, which is approximately three miles away;

   c) Poision Control Center at Rush Presbyterian St. Luke's Hospital.

8. Supervisors have been instructed on the fastest route to St. Margaret Hospital emergency entrance.

9. The Physicians Desk Reference and material safety data sheets are available to all employees.

10. Cancer treatment drugs have been moved into an isolated picking section. The area is posted with signs indicating toxic. We also installed 1/2 inch rubber matting in the aisles of this section. Product from this section is picked and put into plastic bags and sealed before being placed into the order.

11. One-half inch rubber matting has been installed the full length of the aisles in front of the conveyor to prevent breakage.

12. All employees participate in periodic review of procedures to be followed in case of breakage or spills. Training is with verbal and written instruction.

13. One person has been assigned to coordinate all activities involved with OSHA and the right-to-know matters.

HAZARD COMMUNICATION STANDARD

The Occupational Safety and Health Administration (OSHA) Hazard Communication Standard was extended to nonmanufacturers such as product wholesaler distributors (see attached NWDA Briefing Paper). It is not yet in effect, or, at least being applied to FDA-regulated drugs that we handle. Our situation, however, is not clear and the impending implementation of the standard in our industry will have a crippling effect.

The materials we distribute to retail, nursing home and hospital pharmacies are used in dispensing prescriptions. As with any medical product, precision, care and safety are paramount. The personnel involved at our customer facilities are highly trained professionals -- people who know chemistry and the properties of the materials they handle.

PURPOSE OF THE HAZARD COMMUNICATION STANDARD

We understand the purpose of the OSHA Hazard Communication Standard is to convey information on the hazards of chemicals to employees who are exposed to those chemicals, and who were not otherwise getting this kind of information. We support this concept and meet the standard for chemicals used in maintaining our own facility.

HAZARD DETERMINATIONS

The fundamental steps under the standard are taken by the manufacturer of the chemical, who makes the initial hazard determination and prepares proper package labeling and the paperwork to describe the hazards -- the Material Safety Data Sheet or MSDS.

Except for pills and tablets in final solid form, the OSHA standard applies to any medical product which the manufacturer determines should be accompanied by an MSDS.

One determines chemical hazards by testing each product or, if one does not want to go through the expensive and time-consuming process of testing, the hazards of each of the ingredient materials can be described as if the product were made up of 100 percent of each ingredient material.

Most medical products are not straight chemicals -- they are mixtures, solutions and other compounds which may not have been individually subjected to the specific battery of tests prescribed by OSHA. What we are finding, therefore, is:

1) Based on the criteria set forth for determining whether a chemical in a drug product is hazardous, pharmaceutical manufacturers are indicating that most of the products they manufacture, regardless of their concentration, will be determined to have hazardous substances (any chemical which is an irritant and causes a reversible inflammatory affect on living tissue when tested by the methods in 16 CFR 1500.41 is considered to be a hazardous substance).

2) Manufacturers products are describing all conceivable hazards of all ingredients, so that virtually every product we distribute would be accompanied by an MSDS (see attached MSDSs for Crest for Kids - Super Cool Gel, Pepto-Bismol Liquid, Cepacol, and Metamucil). The same product made by different manufacturers, i.e., generic drugs, would be accompanied by separate and different MSDSs.

WHOLESALER RESPONSIBILITY

As a wholesale distributor, I am in no position to second guess the manufacturers of these products. If they send me an MSDS, under the OSHA standard I must copy it for each of my customers and send it to them.

My business alone carries approximately 10,000 drug products that I believe are subject to the OSHA standard and would require an MSDS, if the standard is applied to FDA-regulated drugs. As I mentioned earlier, we now are getting MSDSs for products that just don't warrant MSDSs, simply because makers of these products create MSDSs to meet an unclear standard. Thus, my estimate of the number of products is probably low.

We serve 1,040 customers from our distribution facility. Virtually all of them must be sent a full set of each of the MSDSs we receive. If the standard is applied to FDA-regulated drugs, my single business is liable to receive approximately 10,000 additional MSDSs. Once received, my employees have to store them, index them, keep them up to date, and make a total of 10.4 million copies of them and distribute them to our pharmacy customers. We would have

to keep records, of course, to assure that this had been done, and we would have to repeat the cycle for every new product or revised MSDS that comes in. I am afraid to estimate what this is going to cost me.

What I look at instead is why I am supposed to be doing this. The basic purpose is to provide hazard information to employees who do not have it. The pharmacies with which we deal, however, are staffed by trained and certified professionals. Every pharmacy has multiple texts immediately available and in daily use which describe, in far more detail than an MSDS, the precise chemistry of each material and the hazards involved. Examples of these texts are the Physicians Desk Reference and Facts and Comparisons.

These are not the generic shotgun summaries of all ingredients that you find on the typical MSDS, but are specific to the product or compound. These texts are indexed, cross-referenced, and organized in a format with which the pharmacy is intimately familiar. These volumes communicate -- MSDSs for drugs do not.

The National Wholesale Druggists' Association (NWDA), of which I am a member, estimates the cost of distributing a single item (whether it is a bottle or a piece of paper) to be $1.54 per invoice line.

Using this industry figure, my business alone would have to spend $16,016,000.00 to send out 10.4 million MSDSs (41.6 million copies at 4 pages/MSDS) to our 1,040 pharmacies.

The NWDA membership includes but 310 of the nation's estimated 4,000 drug wholesalers. Even limiting our estimates to NWDA's membership, NWDA estimates each distribution center having to make 4.8 million copies of 12,000 MSDSs which, conservatively assuming an average page length per MSDS of 4, would mean each distribution center distributing 19.2 million pages to pharmacies. The average wholesaler is expected to incur costs in excess of $10 million per distribution center to comply with this requirement.

Our customers, in turn, often are served by more than one drug wholesaler. That means that the flood of paperwork coming to them from us will also come to them from two or three others. Some manufacturers sell directly to pharmacies as well as to wholesalers -- another duplication.

All of this cost and effort would be to provide generic, misleading and incomplete information in the form of MSDSs to professionals who already have published volumes of FDA-required, exact and detailed information on their shelves.

Pharmacists have no room for all this paper, no need for general information on an MSDS, and no likelihood of ever reading it. Yet, once they get it, they would have to maintain files of it, not because they would use it but because the law says so.

CONCLUSION

You would think that such an absurdity could not happen, but that is where the drug wholesaler and pharmacy find themselves. Although, in response

to our comments, OSHA has initiated a notice of proposed rule making and proposed some modest adjustments which would help, we more strongly favor the approach recommended by the Office of Management and Budget -- deletion of FDA-regulated drugs from coverage under the OSHA standard because existing alternative sources of FDA-required information are more accurate, more appropriate, and more effective communications to the intended audience.

This alternative would be consistent with the legislative goals of the Paperwork Reduction Act, the Regulatory Flexibility Act, and common sense.

Thank you for this opportunity to voice our concerns.

* * *

NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION (NWDA)
BRIEFING PAPER
OSHA HAZARD COMMUNICATION STANDARD
September 19, 1988

The OSHA Hazard Communication Standard in 29 CFR 1910.1200 was applied initially in 1985 to employers only in the manufacturing SIC Code designations 20-39. This did not affect wholesalers or retailers, except to the extent they might have distributed chemicals to manufacturers, which we believe rarely occurred.

Pursuant to an order of the Third Circuit Court of Appeals, OSHA expanded the rule making to nonmanufacturers through the unusual mechanism of publishing a final rule followed by a 60-day comment period announced in the preamble. An earlier advance notice of proposed rule making had given the agency some guidance on certain problem areas but, generally speaking, the final rule merely extended to nonmanufacturers the standard which had been implemented for manufacturers. This final rule was published on August 24, 1987.

The basic elements of the standard are a hazard determination by a chemical manufacturer or importer, who then prepares package labeling and documentation in the form of a Material Safety Data Sheet (MSDS). Downstream users and "distributors" of chemicals have the obligation to obtain and/or pass on to their commercial customers any MSDSs that are received.

Many drug wholesalers are small businesses. Almost all of their customers--hospital, retail and nursing home pharmacies--are small businesses.

The so-called chemical hazards distributed by drug wholesalers are prescription and over-the-counter medicines and typical consumer products found in drug stores. Many makers of these products have prepared and sent out MSDSs, whether they needed to or not, and whether the product bears any hazard or not. They supply a paper to satisfy requests for an MSDS, and the distributor is compelled to manage that paperwork thereafter.

The severe impact of the expanded OSHA standard stems from the wholesaler's obligation to maintain and, more importantly, to copy and distribute multi-page MSDSs to all pharmacists served by the wholesaler. In our testimony before the Office of Management and Budget (OMB) and in written comments to OSHA (copies attached), we pointed out that approximately 12,000 individual products that are or may be carried by drug wholesalers are affected by the OSHA standard. Each would have a separate MSDS. NWDA represents 310 of approximately 4,000 drug wholesalers in the U.S. These 310 member distribution centers average 400 customers each. Simple extrapolation shows that each center would be required to handle approximately 4.8 million MSDSs having, assuming a length of 4 pages each, a total of 19.2 million pages. Using realistic and well-documented distribution costs, NWDA

estimates that each distribution center would incur costs for MSDS handling in excess of $7 million. If MSDSs for capsules are included in this data, the cost figure per center would increase by approximately $3.5 million. All 310 member centers would bear additional costs of $3.345 billion.

Each customer of a wholesaler is typically served by more than one supplier. Thus, each customer will be receiving multiple supplies of the same MSDSs.

The customer who is receiving this outpouring of information is a phamacist--a trained, certified, and knowledgable individual. In addition to the extensive education and certification requirements met by such people, they have immediately at hand several texts which convey detailed chemical and hazard information to them in a format with which they are intimately familiar. The deluge of MSDSs, therefore, is totally unnecessary. The information is already communicated by package inserts, and bound reference texts.

NWDA communicated these facts to OMB in hearing testimony, and to OSHA in comments in response to a request for such comments in the August 24, 1987, final rule preamble. OMB heard our concerns and, in its original disapproval of portions of the standard, told OSHA to reopen the record on FDA-regulated drugs and consumer products. In the interim, OMB declared that these disapproved portions of the rule should not go into effect or be enforced. OSHA agreed in a Federal Register communication back to OMB.

OSHA initiated such additional rule making on August 8, 1988. On August 19, the Third Circuit issued a decision holding the OMB disapproval invalid. That decision has been appealed by the Justice Department. We are uncertain of the current status of the final rule, or of the August 8 notice.

It is essential that--(a) the August 8 proposals be taken to conclusion as quickly as possible, and (b) in the interim the enforcement policy of the agency be to issue de minimis or no hazard communication citations on FDA-regulated drugs.

NWDA will file-comments on the August 8 notice. In summary, however, the two primary concerns expressed by NWDA are:

1. The final rule excluded medicines in solid final form for direct administration to patients, "i.e., tablets or pills." The "i.e." cast into doubt the fate of capsules which are solid final form, but are neither pills nor tablets. The proposed rule, in response to the NWDA comment, would change the "i.e." to "e.g.," thereby including capsules. This change is essential, and perhaps could be accomplished by letter interpretation short of rule making.

2. The Physicians Desk References and similar texts publishing FDA-required information are volumes of information that NWDA asked to use in lieu of MSDSs, because the chemical information is more detailed and precise, the volumes are already available to employees, and the information is presented in a format familiar to the medical-pharmacological community. This was proposed in the August 8 notice. It also could be accomplished by letter interpretation of the definition of MSDS as follows:

> "Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of the Hazard Communication Standard. For hazardous chemicals which are drugs regulated by the Food & Drug Administration under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), an approved package insert or drug information prepared in accordance with Food & Drug Administration's requirements, such as published in the Physician's Desk References, is considered an MSDS for purposes of compliance with this rule in the non-manufacturing sector.

PROCTER & GAMBLE

Health & Personal Care
Division Products
Sharon Woods Technical Center
11511 Reed Hartman Highway
Cincinnati, Ohio 45241

MATERIAL SAFETY DATA SHEET

Issue Date: 4/88

SECTION I

Emergency Telephone Number(s): 1-800-543-7270

Identity: Crest For Kids - Super Cool Gel
Ingredients/Chemical Name: Active: sodium fluoride. Inactives: sorbitol, water, hydrated silica, trisodium phosphate, sodium lauryl sulfate, flavor, sodium phosphate, xanthan gum, sodium saccharine, carbomer 956, mica, titanium dioxide, FD&C Blue No. 1.

SECTION II - HAZARDOUS INGREDIENTS/IDENTITY INFORMATION

Hazardous Ingredients as Defined by OSHA, 29 CFR 1910.1200:

This mixture is a drug product regulated by the FDA. This product is not "Hazardous" within the meaning of the OSHA Hazard Communication Standard.

SECTION III - PHYSICAL/CHEMICAL CHARACTERISTICS

Boiling Point (°F):	NA	Specific Gravity (H_2O=1):	~ 1.35
Vapor Pressure (mm Hg):	NK	Percent Volatile by Volume (%):	NK
Vapor Density (Air=1):	NK	Evaporation Rate (nBuOAc=1):	NKA
Solubility in Water:	moderately soluble	Appearance and Odor:	sparkle blue gel. bubblegum odor.

SECTION IV - FLAMMABILITY AND REACTIVITY

Flash Point (Method Used): 200°F (closed cup) Explosive Limits: NA LEL: UEL:

Extinguishing Media: Use water spray, dry chemical, "alcohol" foam, CO_2.
Special Fire Fighting Procedures: None
Unusual Fire Hazards: None
Stability - Unstable: Stable: X Conditions to Avoid: None

Incompatibility (Materials to Avoid): None

Hazardous Decomposition/By-Products: None

Hazardous Polymerization - May Occur: Will Not Occur: X Conditions to Avoid: None

CHM/CHM4

SECTION V - HEALTH AND SAFETY DATA

Route(s) of Entry: topical oral

Health Hazards (Acute and Chronic): Acute: none. Chronic: skin, none. Oral: >18 oz/mo for 10-15 years can cause fluoride toxicity.
Signs and Symptoms of Exposure: Mild gastrointestinal irritation with nausea, vomiting, and diarrhea. Transient superficial eye irritation.

Medical Conditions Generally Aggravated by Exposure: None
Emergency and First Aid Procedures: If 3 oz. or less of the dentifrice has been ingested, administer milk or water to dilute the stomach contents. If more than 3 oz. has been ingested, emesis should occur in most cases and no further action is necessary. If emesis has not taken place and more than 20-25 minutes have passed since ingestion took place, emesis should be induced with Syrup of Ipecac or medical attention sought. Eye exposure: rinse thoroughly with water.

SECTION VI - PRECAUTIONS FOR SAFE HANDLING AND USE

Precautions to be Taken in Handling and Storing: None
Other Precautions: None

Steps to be Taken in Case Material is Released or Spilled: Wipe up with sorbent material. Collect and place in a suitable container. Prevent from reaching waterways. Sorbents may be used.
Waste Disposal Method: To be performed in compliance with all regulations. Landfill or for small quantities: flush down sewer with large quantities of water.

SECTION VII - SPECIAL PROTECTION INFORMATION

Respiratory Protection (Specify Type): N/A
Ventilation - Local Exhaust: NA
Mechanical (General): N/A
Special: N/A
Other: N/A
Protective Gloves: N/A
Eye Protection: N/A
Other Protective Equipment: N/A

* N/A - Not Applicable * N/K - Not Known

THE SUBMISSION OF THIS MSDS MAY BE REQUIRED BY LAW, BUT THIS IS NOT AN ASSERTION THAT THE SUBSTANCE IS HAZARDOUS WHEN USED IN ACCORDANCE WITH PROPER SAFETY PRACTICES AND NORMAL HANDLING PROCEDURES. DATA SUPPLIED IS FOR USE ONLY IN CONNECTION WITH OCCUPATIONAL SAFETY AND HEALTH.

CHM/117

PROCTER & GAMBLE

Health & Personal Care
Division Products
Sharon Woods Technical Center
11511 Reed Hartman Highway
Cincinnati, Ohio 45241

MATERIAL SAFETY DATA SHEET

Date: 12/85

SECTION I

Emergency Telephone Number(s): 1-800-543-7270

Identity: Pepto-Bismol Liquid

Ingredients/Chemical Name: Active: bismuth subsalicylate. Total salicylate: 230 mg/oz. Inactives: FD&C Red No. 3, FD&C Red No. 40, flavor, magnesium aluminum silicate, methylcellulose, saccharin sodium, salicylic acid, sodium salicylate, water.

SECTION II - HAZARDOUS INGREDIENTS/IDENTITY INFORMATION

Hazardous Ingredients as Defined by OSHA, 29 CFR 1910.1200:

This mixture is a drug product regulated by the FDA. This mixture has been tested as a whole and is considered a combustible liquid within the meaning of OSHA Hazard Communication Standard.

SECTION III - PHYSICAL/CHEMICAL CHARACTERISTICS

Boiling Point (°F):	NK	Specific Gravity (H_2O=1):	~1.0
Vapor Pressure (mm Hg):	NK	Percent Volatile by Volume (%):	NK
Vapor Density (Air=1):	NK	Evaporation Rate (nBuOAc=1):	NK
Solubility in Water:	moderately soluble	Appearance and Odor:	pink, viscous, opaque, suspension; wintergreen

SECTION IV - FLAMMABILITY AND REACTIVITY

Flash Point (Method Used): 140°F (closed cup) Explosive Limits: NK LEL: UEL:

Extinguishing Media: Use water spray, dry chemical, alcohol foam, CO_2.

Special Fire Fighting Procedures: None

Unusual Fire Hazards: Vapors form explosive mixtures in air at very high temperatures.

Stability - Unstable: Stable: X Conditions to Avoid: None

Incompatibility (Materials to Avoid): None

Hazardous Decomposition/By-Products: None

Hazardous Polymerization - May Occur: Will Not Occur: X Conditions to Avoid: None

SECTION V - HEALTH AND SAFETY DATA

Route(s) of Entry: oral

Health Hazards (Acute and Chronic): None expected.

Signs and Symptoms of Exposure: An overdose will produce symptoms of salicylate intoxication - nausea, dizziness, tinnitus, deafness, sweating, and dyspepsia.

Medical Conditions Generally Aggravated by Exposure: See bottle label

Emergency and First Aid Procedures: Ingestion: based on salicylate dose: <0.11 oz./lb., dilute stomach contents with water or milk. If 0.11-0.32 oz./lb., induce emesis. If >0.32 oz./lb., seek medical attention as soon as possible.

SECTION VI - PRECAUTIONS FOR SAFE HANDLING AND USE

Precautions to be Taken in Handling and Storing: See label

Other Precautions: None

Steps to be Taken in Case Material is Released or Spilled: Collect and place in a suitable container. Sorbents may be used.

Waste Disposal Method: To be performed in compliance with all regulations. Flush down sewer with large quantities of water.

SECTION VII - SPECIAL PROTECTION INFORMATION

Respiratory Protection (Specify Type): NA

Ventilation - Local Exhaust: NA
Mechanical (General): NA
Special: NA
Other: NA

Eye Protection: NA

Protective Gloves: None

Other Protective Equipment: NA

' N.A. - Not Applicable ' N.K. - Not Known

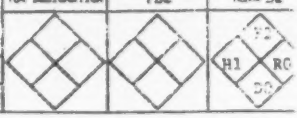
THE SUBMISSION OF THIS MSDS MAY BE REQUIRED BY LAW, BUT THIS IS NOT AN ASSERTION THAT THE SUBSTANCE IS HAZARDOUS WHEN USED IN ACCORDANCE WITH PROPER SAFETY PRACTICES AND NORMAL HANDLING PROCEDURES. DATA SUPPLIED IS FOR USE ONLY IN CONNECTION WITH OCCUPATIONAL SAFETY AND HEALTH.

MERRELL DOW PHARMACEUTICALS INC.
2110 East Galbraith Road
Cincinnati, OH 45215

MATERIAL SAFETY DATA SHEET

Product NAME AND NUMBER: Cepacol 210

NFPA	MERRELL DOW RATING
FOR DESIGNATION	FIRE / REACTIVE



EMERGENCY PHONE: (513) 948-9111

EFFECTIVE DATE: 1/10/84

SECTION I

MANUFACTURER'S NAME	EMERGENCY TELEPHONE NO.
Merrell Dow Pharmaceuticals, Inc.	(513)948-9111

ADDRESS (Number, Street, City, State, and Zip Code) 2110 E. Galbraith Rd. Cincinnati, Ohio 45215

CHEMICAL NAME AND SYNONYMS of active ingredient: Cetylpyridinium Chloride;
1-Hexadecylpyridinium Chloride

TRADE NAMES (and Synonyms): Cepacol, Ceepryn

CHEMICAL FAMILY: Quaternary Ammonium	FORMULA: $C_{21}H_{38}NCl$

CAS NUMBER: 123-03-5

SECTION II - HAZARDOUS INGREDIENTS

HAZARDOUS MIXTURES OF OTHER LIQUIDS, SOLIDS, OR GASES

Oral toxicity (rat) LD50 24 hr. 55-73 ml/Kg.)... is a mouthwash/gargle

Cetylpyridinium Chloride (oral LD50 rat 200 mg/Kg.),

Supplied in 4 oz., 8 oz., 12 oz., 18 oz., 24 oz., and 32 oz. plastic

bottles and a 14 oz. Direct-Stream Dispenser.

SECTION III - PHYSICAL DATA

BOILING POINT °F	NA	SPECIFIC GRAVITY H_2O = 1	.91-1.0
VAPOR PRESSURE mm/Hg	NA	PERCENT VOLATILE BY VOLUME (%)	NA
VAPOR DENSITY AIR = 1	NA	EVAPORATION RATE	NA
SOLUBILITY IN WATER	100%	MELTING POINT	NA

APPEARANCE AND ODOR: Clear, yellow liquid with characteristic odor and taste

SECTION IV - FIRE AND EXPLOSION HAZARD DATA

FLASH POINT (Method Used)	103°F Closed cup	IGNITION TEMP.	NA
FLAMMABLE LIMITS	LOWER: NA	UPPER	NA

EXTINGUISHING MEDIA: Water spray, Carbon Dioxide, Dry Chemical or Alcohol Foam.

SPECIAL FIRE FIGHTING PROCEDURES

As for surrounding fire.

UNUSUAL FIRE AND EXPLOSION HAZARDS: None

*DA-Doesn't Apply

*NA-Not Available

PRODUCT NAME AND NUMBER

Cepacol 210

SECTION V - HEALTH HAZARD DATA

Alcohol- ACGIH TLV 1000 ppm.

EFFECTS OF OVEREXPOSURE Cetylpyridinium Chloride in the concentration used in Cepacol is non-irritating to tissues. Consult the "Physicians Desk Reference for non-prescription Drugs" for product useage information and warnings. Ingestion of large amounts will produce intoxication. If splashed in eye, may cause minor irritation.

EMERGENCY AND FIRST AID PROCEDURES Ingestion: as for alcohol

Eye: Flush with water

SECTION VI - REACTIVITY DATA

		INCOMPATIBILITY (Materials to Avoid)
	X	

HAZARDOUS DECOMPOSITION OR BYPRODUCTS Burning would produce oxides of Carbon

STABILITY		CONDITIONS TO AVOID
	X	

SECTION VII - SPILL OR LEAK PROCEDURES

STEPS TO BE TAKEN IF MATERIAL IS SPILLED

Flush to drain with water

WASTE DISPOSAL METHOD

In accordance with Local, State and Federal regulations

SECTION VIII - SPECIAL PROTECTION INFORMATION

RESPIRATORY PROTECTION (Specify Type) DA

VENTILATION	LOCAL EXHAUST	DA	SPECIAL	DA
	MECHANICAL (General)	DA	OTHER	DA

PROTECTIVE GLOVES DA EYE PROTECTION DA

OTHER PROTECTIVE EQUIPMENT DA

SECTION IX - SPECIAL PRECAUTIONS

PRECAUTIONS TO BE TAKEN IN HANDLING AND STORING

OTHER PRECAUTIONS

PROCTER & GAMBLE

Health & Personal Care
Division Products
Sharon Woods Technical Center
11511 Reed Hartman Highway
Cincinnati, Ohio 45241

MATERIAL SAFETY DATA SHEET

Issue Date: 12/86

SECTION I

Emergency Telephone Number(s): 1-800-543-7270

Identity: Metamucil

Ingredients/Chemical Name: Active: psyllium hydrophilic mucilloid; Regular - dextrose; Orange and Strawberry - sucrose, citric acid, flavor
Other: (FD&C Yellow No. 6 Lake, FD&C Yellow No. 6 - Orange only) FD&C Red No. 40 Lake, FD&C Red 40 - Strawberry only)

SECTION II - HAZARDOUS INGREDIENTS/IDENTITY INFORMATION

Hazardous Ingredients as Defined by OSHA, 29 CFR 1910.1200: Psyllium: 10mg/m^3
OSHA Pel 15 mg/m^3 (nuisance dust standard) ACGIH TLV 10 mg/m^3
This material is a potential allergen and therefore poses a moderate health hazard.

SECTION III - PHYSICAL/CHEMICAL CHARACTERISTICS

Boiling Point (°F): NA
Vapor Pressure (mm Hg): NA
Vapor Density (Air=1): NA
Solubility in Water: Very soluble

Specific Gravity (H_2O=1): NA
Percent Volatile by Volume (%):NA
Evaporation Rate (nBuOAc=1): NA
Appearance and Odor:
Regular - tan powder, sweet
Orange - orange powder, orange
Strawberry - pink powder, strawberry

SECTION IV - FLAMMABILITY AND REACTIVITY

Flash Point (Method Used): NA

Explosive Limits: Index = .002
MCC = 0.1 oz/ft^3

Extinguishing Media: Water or foam

Special Fire Fighting Procedures: None

Unusual Fire Hazards: None

Stability - Unstable: Stable: X Conditions to Avoid: None

Incompatibility (Materials to Avoid): None

Hazardous Decomposition/By-Products: None

Hazardous Polymerization - May Occur: Will Not Occur: X Conditions to Avoid: None

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SECTION V - HEALTH AND SAFETY DATA

Route(s) of Entry: Oral, - Respiratory and Eyes

Health Hazards (Acute and Chronic): Acute - eye exposure may cause slight irritation. Chronic - none known

Signs and Symptoms of Exposure: asthmatic symptoms, symptoms of conjunctivitis and rhinitis

Medical Conditions Generally Aggravated by Exposure: Persons with known allergies to English plantain or psyllium and persons with severe respiratory problems should avoid breathing the dust.

Emergency and First Aid Procedures: Eye exposure: flush with water, inhalation: seek medical attention for severe bronchial spasm.

SECTION VI - PRECAUTIONS FOR SAFE HANDLING AND USE

Precautions to be Taken in Handling and Storing: Avoid respiratory exposure

Other Precautions: None

Steps to be Taken in Case Material is Released or Spilled: Vacuum

Waste Disposal Method: Incinerate or bury in an approved land fill

SECTION VII - SPECIAL PROTECTION INFORMATION

Respiratory Protection (Specify Type): Dust - nuisance

Ventilation - Local Exhaust: NA
Mechanical (General): Acceptable
Special: None
Other: None

Eye Protection: Safety glasses

Protective Gloves: None

Other Protective Equipment: NA

* N.A. - Not Applicable * N.K. - Not Known

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CHM25/REG2

N · A · W

National Association of Wholesaler-Distributors

Statement of:

Mark H. Freedman, President
Cooper-Lewis Incorporated

Providence, Rhode Island

Before the:

Subcommittee on Exports, Tourism,
and Special Problems

Committee on Small Business
U.S. House of Representatives

On:

Implementation Of The Hazard Communication
Standard In The Non-Manufacturing Sector

September 28, 1988

1725 K Street, N.W. • Suite 710 • Washington, D.C. 20006 • 202-872-0885 • FAX: 202-785-0586

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SUMMARY

The National Association of Wholesaler-Distributors (NAW) fully subscribes to the purpose of the Hazard Communication Standard; i.e., to increase the availability of hazard information to employers and employees, prevent employee exposure to hazardous chemicals in the workplace and, as a result, reduce the incidence of chemically-related occupational diseases and injuries in American workers. Further, we believe that a uniform federal standard is essential to ensure that those who make, sell and use chemical products are not faced with the crippling cost and administrative burden of having to comply with a plethora of different sets of complex rules.

However, the original HCS applied to workplaces in wholesale distribution where the potential for exposure to harmful chemicals is greatest, and we are unaware of any compelling evidence that suggests that workers employed in wholesale trade generally are at risk of experiencing harmful chemical exposures in the workplace. As a result, we question the need for and the effectiveness of the all-encompassing expansion of the HCS.

The HCS is itself a very complicated rule and small employers are struggling with the confusing and expensive task of meeting the obligations assigned them by the standard. Cooper-Lewis's experience in complying first with various state rules and now the OSHA HCS suggests that many small employers and their workers would benefit were the HCS to specifically authorize and OSHA approve multi-employer training programs.

For the wholesaler-distributor supplying products to downstream users, the HCS is a costly and confusing blizzard of paperwork that exceeds the administrative capabilities of smaller companies even under the best of circumstances. The manner of implementation by a large portion of the "upstream" supplier community has magnified this problem. Again, our company's experience suggests that everyone in the chain of distribution would benefit were the HCS to authorize and OSHA sanction alternative methods of downstreaming MSDSs.

STATEMENT OF

Mark H. Freedman, President

Cooper-Lewis Incorporated, Providence, Rhode Island

for the

National Association of Wholesaler-Distributors

BEFORE THE

Subcommittee on Exports, Tourism, and Special Problems

Committee on Small Business

U.S. House of Representatives

IMPLEMENTATION OF THE HAZARD COMMUNICATION STANDARD IN THE NON-MANUFACTURING SECTOR

September 28, 1988

Chairman Sisisky and Members of the Subcommittee.

Good morning and thank you for the opportunity to present my views regarding implementation of the Hazard Communication Standard (HCS) in the non-manufacturing sector.

I. INTRODUCTION

A. COOPER-LEWIS INCORPORATED

I am Mark H. Freedman, President of Cooper-Lewis Incorporated, Providence, Rhode Island. Cooper-Lewis is a 41 year old company that provides products and services to the automotive aftermarket as well as to industrial, marine and municipal accounts in five New England states --Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island.

Our company, which employs 24 people in two locations -- Providence and Lynn, Massachusetts, generated $3 million in sales in 1987. In size and volume, Cooper-Lewis is a "mainstream" automotive aftermarket wholesaler and, indeed, a true reflection of the wholesale distribution industry generally.

B. THE AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION

Among its other affiliations, Cooper-Lewis is a member of the Automotive Service Industry Association (ASIA). I am privileged to serve on the ASIA Board of Directors and as Chairman of the Executive Committee of ASIA's Auto Paint, Body Supply and Equipment (PB&E) Division.

ASIA is the world's largest and most comprehensive automotive organization. Its membership encompasses more than 8,500 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, automotive electric service distributors, manufacturers' representatives, manufacturers, and re-manufacturers of automotive replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories.

II. THE NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS AND THE WHOLESALE DISTRIBUTION INDUSTRY

ASIA is a member of the National Association of Wholesaler-Distributors (NAW), and it is on NAW's behalf that I appear today.

NAW is a federation of 120 national wholesale distribution trade associations (a list is attached as Appendix A), 46 state and regional trade associations, and some 3,000 individual wholesale distribution firms. All told, NAW represents approximately 45,000 wholesale distribution companies with 150,000 places of business nationwide.

NAW's membership, which is dominated by smaller businesses, is responsible for over 60 percent of the $1.4 trillion of merchandise which flows through wholesale channels annually. NAW members also employ a comparable percentage, or 3 million, of the over 5 million Americans who work in wholesale trade. Thus, while many of the individual firms represented by NAW are small individually, their collective economic importance is extremely significant.

III. A UNIFORM APPROACH TO WORKPLACE HAZARD COMMUNICATION IS DESIRABLE

Let me assure you and all members of the subcommittee, Mr. Chairman, that NAW fully subscribes to the purpose of the HCS and recognizes the need for a uniform federal standard. The preventative approach to workplace hazard communication serves the unmistakable interest of workers, employers and society in general, because it seeks to combat occupational disease at its source.

I would point out that the cost of compliance with the HCS is a particularly important concern of wholesaler-distributors, and we agree with the logic of OSHA's contention that "a uniform, Federal standard will reduce the cost of compliance with the increasing number of state and local right-to-know laws." (48 Fed. Reg. 53327, 1983.)

According to a recent NAW survey profiling some 2,000 wholesale distribution firms across the United States, 24 percent employ people in multiple states, 72 percent sell their products in interstate commerce, and 72 percent generate an annual sales volume of $10 million or less. Nearly 90 percent have annual sales volumes of $25 million or less. So clearly, the cost benefits of uniformity will be widely felt in my industry.

That said, however, NAW is unaware of any compelling evidence that suggests that workers employed in wholesale trade generally are at risk of experiencing harmful exposures to hazardous chemicals in the workplace. As I will describe in a moment, the original HCS applied in workplaces in wholesale distribution where the potential for harmful exposures is greatest. As a result, we question the need for and effectiveness of the all-encompassing expansion of the scope of the HCS.

IV. WHOLESALER-DISTRIBUTOR COMPLIANCE OBLIGATIONS UNDER THE OSHA HCS

A. EMPLOYER OBLIGATIONS

The original HCS required only manufacturers to comply with the standard as employers. Thus, as I previously mentioned, wholesaler-distributors such as Cooper-Lewis, who conduct product processing or "miscellaneous" manufacturing operations such as machining, blending or mixing, have been required since May 1986 to have a written hazard communication program and train employees on the hazards of the chemicals to which they may be exposed.

One result of the August 24, 1987 Final Rule is to extend these obligations to all wholesaler-distributors who have facilities where covered products are present in any quantity, in nearly any form, and for any reason. For all practical purposes, these obligations went into effect for industry firms on June 24 of this year.

The challenge of complying with this aspect of the HCS presents a high hurdle to all employers in wholesale distribution. Employers are uncertain as to how the HCS applies, when it applies, to what products it applies and under what circumstances. According to the survey of wholesale distribution

companies I previously referenced, nearly half do not know if they are required to conduct a workplace hazard communication and training program under the expanded HCS.

Because the in-house capabilities of small employers do not even begin to match the ability of larger companies to develop and implement adequate workplace hazard communication programs, many are certain to require some level of outside assistance. NAW itself has developed a compliance assistance program that is in wide use in our industry today. However, the NAW program is generic, and I believe that many wholesaler-distributors feel the need to hire a right-to-know consultant to help them answer basic, fundamental questions as well as accomplish the more complicated task of developing and implementing employee training programs. The costs associated with this vary widely.

One way to help small employers conduct technically sound employee education programs at an affordable cost would be to have the HCS authorize private, OSHA-approved multi-employer training programs. This would enable employers to combine resources to obtain the outside technical expertise that is simply out of the economic reach of smaller businesses on an in-house basis.

I have to say, Mr. Chairman, that some of the confusion would probably have been avoided if employers in the non-manufacturing sector had been given more time to assess their compliance obligations, develop and then implement a hazard communication program. The August 24, 1987 Final Rule allowed newly-covered employers just 270 days to comply with all aspects of the expanded HCS. This contrasts sharply with the two and one-half years manufacturers had to fully comply with the original Final Rule.

I also believe some of the confusion would have been avoided if OSHA had been prepared with a compliance assistance program to go with the expansion of the HCS in August of last year. The Office of Management and Budget (OMB) subsequently directed OSHA to develop such a plan by January 1, 1988. Unfortunately, OSHA missed that deadline by nine months and is only now beginning to make compliance assistance materials available to employers.

Finally, I applaud OSHA for publishing in the August 8 Federal Register "Guidelines for Employer Compliance" as an appendix to the Notice of Proposed Rulemaking to further modify the HCS. However, Mr. Chairman, this does not erase the fact that for months on end, small wholesaler-distributors and others have struggled to comply with the HCS without the most basic tools they need to do so successfully.

B. **SUPPLIER OBLIGATIONS**

Wholesaler-distributors that sell hazardous chemical products have been required to ship labeled containers and provide material safety data sheets (MSDSs) to their manufacturer and distributor customers since the original HCS went into effect in November 1985. The August 24, 1987 Final Rule requires wholesaler-distributors to provide MSDSs to every commercial customer of covered products -- virtually the entire customer base of the industry. This may sound simple enough, Mr. Chairman, but believe me, for small companies it is not. Consider what my company faces in that regard.

On a typical business day, Cooper-Lewis will process an average of 250 sales transactions with three to four items per invoice. For each sale, we have to determine what items require MSDSs in order to comply with the HCS. Mr. Chairman, we deal with a customer base of 1,800 accounts --1,000 on a regular basis -- and carry nearly 12,000 part numbers supplied by approximately 200 manufacturers. I would estimate that we maintain on file at least 1,500 to 2,000 MSDSs for products we carry in our inventory.

If you multiply our normal customer base of 1000 full time accounts by the 1500 to 2,000 MSDS forms we maintain in our files, it is easy to see that the intended downstream transmittal of MSDSs is a paperwork nightmare and an extreme hardship.

In pre-OSHA HCS days, distribution of MSDSs by Cooper-Lewis under state law was by request. This was a more manageable but still costly system. When that hazard communication system went into effect, I had to immediately set up a separate filing system and purchase an additional copying machine. For financial reasons, I appointed myself to act as the person responsible for obtaining and maintaining MSDSs. All that remained was to find the time to comply with customer requests for sheets on items they purchased from us. This was done after hours and on weekends to avoid having to hire an additional employee.

Each one of these expenses cut into our final profit upon which we hope to grow. Unfortunately, these costs cannot be passed on to our customers in a highly competitive industry like mine.

The OSHA HCS requirement that MSDSs be automatically transmitted with the initial shipment of covered products has substantially increased the burden I just described.

Clearly, Mr. Chairman, the paperwork burden that goes along with obtaining, maintaining and transmitting MSDS is enormous even under the very best of circumstances, and is beyond the recordkeeping capabilities of many small companies.

The requirement that wholesaler-distributors obtain from their supplier an MSDS for any covered product for which none is furnished poses a substantial cost and compliance burden for my company and the industry in general. The NAW survey provides us with some evidence as to the magnitude of the problem. Seventy four percent of the respondents indicated that they sell, on average, 321 products that contain hazardous chemicals. However, fewer than half could state that they had an MSDS for every hazardous chemical in their workplace. Beyond that, only 30 percent were receiving necessary MSDSs from their suppliers as the HCS intends, and fully 20 percent were not routinely receiving MSDSs from their suppliers at all.

Unfortunately, the paperwork and compliance saga does not end here. The process by which hazard information is sent through the chain of distribution to employers is significantly complicated by the transmittal of irrelevant MSDSs. This occurs in two ways.

First, 31 percent of our survey respondents stated that they were receiving MSDSs on products they do not purchase from that particular supplier. And indeed, a number of wholesale distribution firms have informally indicated that the compliance and recordkeeping burdens of the HCS are most easily and rapidly met by transmitting to <u>all</u> customers MSDSs on <u>every</u> product they sell to <u>any</u> customer.

The second way this problem manifests itself is through the transmittal of MSDSs on products that are exempt from the standard's coverage. To cite one example outside the automotive aftermarket industry, we have learned from a number of electrical distributors that one manufacturer of a typical 100-watt light bulb transmits an MSDS on that product, while other manufacturers of a similar product do not, citing the article exemption. I would guess that the former is issuing an MSDS to protect itself from possible legal and regulatory problems. But this manner of implementing the standard, unintended by OSHA, unnecessarily compounds the paperwork hardship for the wholesaler-distributor.

V. <u>MEETING THE MSDS TASK</u>

In most instances, Cooper-Lewis' suppliers provide only one set of MSDSs for our use as an employer. Unfortunately, when we ask suppliers for multiple sets, our request falls on deaf ears. So, in addition to maintaining the original sheets we receive, we have a choice.

First, we can estimate how many sheets we will need and make that number of duplicates. If we make copies of each MSDS on file for each of our active accounts, we would be looking at 1,500,000 pieces of paper to store and transmit -- assuming all MSDSs are one page long. The copying cost -- a mere $15,000 ($.01 per copy x 1000 accounts x 1500 forms). Of course, these numbers are very low because most MSDSs are not limited to one page in length. And I would point out that this process would have to be repeated for any MSDS that is updated by a manufacturer. This occurs frequently. Needless to say, we decided against this option.

The MSDS distribution method we utilize requires us to determine on a sale-by-sale basis if an order includes the initial shipment of any covered product and if so, locate the master sheet, copy it, and send the copy to the customer. This is time consuming and severly reduces employee productivity. And in addition, we must maintain an elaborate tracking system to ensure that our MSDS transmittal obligation under the HCS is being met.

Mr. Chairman, Cooper-Lewis is a small business that simply does not have the human or financial resources to continue to fully comply with the OSHA HCS in its current form and remain competitive. It is a fantasy to believe that small wholesaler-distributors can simply absorb the costs associated with the blizzard of paperwork the OSHA HCS generates.

VI. A BETTER WAY

As I mentioned at the beginning of my statement, I serve as Chairman of the Executive Committee of ASIA's Auto Paint, Body Supply and Equipment (PB & E) Division.

Some months ago, I asked the PB&E Executive Committee to see if we could develop a more efficient system for the downstream transmittal of MSDSs. The result was an April 1988 inter-industry meeting to explore this issue. All of the manufacturers who were invited to participate did so, and all committed themselves to help find a better way.

Various suggestions were made, but the one that generated the most enthusiastic response was to have MSDSs prepared on microfiche, which would drastically reduce the volume of paperwork generated by the HCS. The microfiche would be collected by a commercial vendor which would reproduce and transmit the information to companies subscribing to the service. This clearing house concept, if authorized by OSHA, would greatly simplify HCS compliance requirements. I urge OSHA to consider this and other alternative approaches to the downstream transmittal of MSDSs.

VII. **CONCLUSION**

The OSHA Hazard Communication Standard, laudable in its objective and for its preventative approach, is, in its current form, a confusing and expensive paperwork and compliance nightmare for wholesaler-distributors both as employers and as suppliers. The HCS's effectiveness in achieving the goal for which it was created is undermined by its complexity, sheer mass, and bloated paperwork requirements.

We are aware that the regulatory process is underway for the purpose of modifying the HCS. NAW intends to participate in that process as appropriate, although I must say that I see nothing in the Notice of Proposed Rulemaking that does anything more than make very modest changes in a few provisions.

NAW would encourage OSHA in the strongest possible terms to adopt as primary goals clarity, simplification, flexibility and paperwork reduction. This is critical for small wholesaler-distributors, Mr. Chairman, and the beneficiaries will be those the standard is intended to protect -- American workers.

Thank you again for the opportunity to testify this morning.

APPENDIX A

National Wholesaler-Distributor Organizations Affiliated with the National Association of Wholesaler-Distributors

Air-conditioning & Refrigeration Wholesalers
American Jewelry Marketing Association
American Machine Tool Distributors Association
American Supply Association
American Traffic Safety Services Association, Inc.
American Veterinary Distributors Association
Appliance Parts Distributors Association, Inc.
Associated Equipment Distributors
Association of Steel Distributors
Association of the Wall and Ceiling Industries-International
Automotive Service Industry Association
Aviation Distributors & Manufacturers Association

Bearing Specialists Association
Beauty & Barber Supply Institute, Inc.
Bicycle Wholesale Distributors Association, Inc.
Biscuit & Cracker Distributors Association

Ceramic Tile Distributors Association
Copper & Brass Servicenter Association
Council for Periodical Distributors Association
Council of Wholesale-Distributors
  National Kitchen & Bath Association

Door & Hardware Institute

Engine Service Association, Inc.
Explosive Distributors Association, Inc.

Farm Equipment Wholesalers Association
Fire Suppression Systems Association
Fluid Power Distributors Association, Inc.
Food Industries Suppliers Association
Foodservice Equipment Distributors Association

General Merchandise Distributors Council
Graphic Arts Suppliers Association

Health Industry Distributors Association
Hobby Industry Association of America

Independent Medical Distributors Association
Industrial Distributors Association
Institutional & Service Textile Distributors Association, Inc.
International Sanitary Supply Association
International Truck Parts Association
Irrigation Association

Jewelry Industry Distributors Association

Machinery Dealers National Association
Material Handling Equipment Distributors Association
Motorcycle Industry Council
Music Distributors Association

National-American Wholesale Grocers' Association
National Appliance Parts Suppliers Association
National Association for Hose & Accessories Distributors
National Association of Aluminum Distributors
National Association of Chemical Distributors
National Association of Container Distributors
National Association of Decorative Fabric Distributors
National Association of Electrical Distributors
National Association of Floor Covering Distributors
National Association Flour Distributors
National Association of Manufacturing Opticians
National Association of Marine Services, Inc.
National Association of Meat Purveyors
National Association of Plastics Distributors
National Association of Service Merchandising
National Association of Sporting Goods Wholesalers
National Association of Tobacco Distributors
National Association of Writing Instrument Distributors
National Beer Wholesalers Association
National Building Material Distributors Association
National Business Forms Association
National Candy Wholesalers Association
National Commercial Refrigeration Sales Association
National Electronic Distributors Association
National Fastener Distributors Association
National Food Distributors Association
National Frozen Food Association
National Grocers Association
National Independent Poultry and Food Distributors Association
National Industrial Belting Association
National Industrial Glove Distributors Association
National Insulation Contractors Association
National Lawn & Garden Distributors Association
National Locksmith Suppliers Association
National Marine Distributors Association
National Paint Distributors, Inc.
National Paper Trade Association, Inc.
National Plastercraft Association
National Printing Equipment and Supply Association
National Sash & Door Jobbers Association
National School Supply & Equipment Association
National Solid Wastes Management Association
National Spa and Pool Institute
National Truck Equipment Association
National Welding Supply Association
National Wheel & Rim Association
National Wholesale Druggists' Association
National Wholesale Furniture Association
National Wholesale Hardware Association
North American Heating & Airconditioning Wholesalers
North American Horticultural Supply Association
North American Wholesale Lumber Association, Inc.

Optical Laboratories Association
Outdoor Power Equipment Distributors Association

Pet Industry Distributors Association
Petroleum Equipment Institute
Petroleum Marketers Association of America
Power Transmission Distributors Association, Inc.

Safety Equipment Distributors Association, Inc.
Scaffold Industry Association
Security Equipment Industry Association
Shoe Service Institute of America
Specialty Tools & Fasteners Distributors Association
Spring Service Association
Steel Service Center Institute

Textile Care Allied Trades Association
Toy Wholesalers' Association of America

United Pesticide Formulators & Distributors Association

Video Software Dealers Association

Wallcovering Distributors Association
Warehouse Distributors Association for Leisure & Mobile Products
Water and Sewer Distributors Association
Wholesale Florists & Florist Suppliers of America
Wholesale Stationers' Association, Inc.
Wine & Spirits Wholesalers of America, Inc.
Woodworking Machinery Importers Association
Woodworking Machinery Distributors Association

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS
1725 K Street, N.W., Washington, D.C. 20006 • 202/872-0885

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**TESTIMONY OF MARGARET SEMINARIO, ASSOCIATE DIRECTOR
DEPARTMENT OF OCCUPATIONAL SAFETY, HEALTH AND SOCIAL SECURITY
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE HOUSE SMALL BUSINESS SUBCOMMITTEE ON
EXPORTS, TOURISM, AND SPECIAL PROBLEMS
ON THE OSHA HAZARD COMMUNICATION STANDARD AND SMALL BUSINESS**

September 28, 1988

The AFL-CIO appreciates the opportunity to testify at this hearing on the OSHA Hazard Communication Standard and its application to small businesses.

The AFL-CIO and our affiliated unions have been integrally involved in securing right-to-know protections for workers exposed to toxic chemicals on the job. Since the early 1970's, the AFL-CIO pushed for a federal standard on chemical hazard information. When federal action was slow in coming, we worked with our state federations of labor to secure right-to-know protections at the state level.

The AFL-CIO was a major participant in the OSHA rulemaking proceedings on the Hazard Communication Standard, and has directly participated in the development of many of the state laws. We successfully challenged inadequacies in OSHA's final standard and won expansion of the standard to all sectors and improvements in the trade secret provisions. We continue to be involved in other on-going litigation on the standard.

For the past several years, the AFL-CIO has directed our efforts towards the successful implementation of the standard. In 1987, we held a major national teleconference to educate local union leaders and members about the standard, and we have developed a package of right-to-know training materials for our members.

My testimony today is based upon this long experience with the OSHA Hazard Communication Standard and worker right-to-know protections.

The purpose of the OSHA Hazard Communication Standard, and other right-to-know measures, is to provide workers exposed to toxic chemicals on the job with information about the chemical's identity, its health and safety hazards, and proper measures for

control. Prior to the standard, this kind of information was often not provided by chemical manufacturers, leaving not only workers, but also employers in the dark about the hazards of these substances.

The OSHA Hazard Communication Standard puts the responsibility on chemical manufacturers to evaluate the chemicals they distribute in commerce and to provide chemical identity, hazard and pre-cautionary information to downstream users through a system of container labeling and material safety data sheets.

Employers who use hazardous chemicals must: (1) assure that containers are labeled, (2) maintain material safety data sheets in an accessible location, (3) develop a list of hazardous chemicals in use, and (4) train workers on the hazards and safe use of the chemicals and the requirements of the OSHA standard.

The AFL-CIO believes that this division of responsibility between chemical manufacturers and user employers is appropriate. It makes sense that chemical manufacturers evaluate the chemicals they produce and provide information about hazards and measures for proper use. It also makes sense that employers who use chemicals be aware of their hazards and provide information and training to their employees.

The OSHA Hazard Communication Standard, in our view, is necessary and workable for large and small employers alike. Small employers who manufacture and distribute hazardous chemicals should have no less obligation than large chemical manufacturers to provide information on the hazards and safe use practices of their products. Whether hazardous chemicals are distributed by small firms or multinational manufacturers, the same information is needed by employers and employees who use the chemicals. Firms that can't provide complete and accurate information on their hazardous products should not be in the chemical manufacturing business.

All employers who use hazardous chemicals should similarly be capable of using the products properly in a safe manner. Employers have an obligation to assure the health and

safety of their workers. They cannot do so if they lack information or understanding about chemical hazards and appropriate control measures.

The AFL-CIO believes that the OSHA Hazard Communication Standard can provide required information on chemical hazards to both employers and workers. All parts of the standards information requirements--labels, materials safety data sheets and training--are necessary vehicles for the communication of hazard information.

The material safety data sheet is the primary means for transmitting chemical hazard information. These sheets contain information on the chemical identity, its properties, safety and health hazards, emergency procedures and precautions for safe use. Data sheets are generally prepared by chemical manufacturers though some employers prepare their own. In addition, there are a number of private vendors who prepare and sell sheets for a fee.

Material safety data sheets vary widely in their quality. Some still provide grossly incomplete and misleading information. Others are very detailed and list the full range of hazards and underlying toxicological test data.

Concerns have been raised by some in the small business community that material safety data sheets are too complex and the material safety data sheet requirements of the standard too burdensome. We do not agree.

Material safety data sheet forms provide important information on the hazards of chemicals. These forms in fact are the only source of comprehensive information about the chemicals available to most employers. Some of the forms can be lengthy and detailed. However, with a basic understanding about material safety data sheet forms and the kinds of information provided, key information on the forms can be picked out. This information can then be applied to the labeling and training provisions of the standard.

While the AFL-CIO believes that the OSHA Hazard Communication Standard is basically sound, we believe that much more could be done to assure its successful implementation.

Several years ago, we recommended that OSHA devote resources and staff to assist employers to comply with the standard. We believed that such assistance was appropriate. We were also concerned that many of the high priced material safety data sheet packages and training programs developed by vendors were not providing adequate information.

Specifically we recommended that the agency develop a generic training program that would cover the standards requirements and major classes of chemical hazards, and make the materials available at cost. This would assist employers and help to assure that workers were adequately trained.

We also recommended that OSHA utilize its consultation program to assist employers to comply with the standard. Over $20 million in federal money is directed annually to the states for OSHA compliance assistance for small business. The AFL-CIO believes it makes sense to use these funds and programs to help small businesses comply with important standard.

Unfortunately, OSHA Assistant Secretary John Pendergrass believes that providing compliance assistance should be left to the private sector, with government playing little or no role.

The AFL-CIO does not agree. We believe that the recommendations we have made and other approaches can still be used to effectively assist small businesses comply with the OSHA Hazard Communication Standard. Recently OSHA announced the availability of a compliance workbook for the standard. Under the direction of the Federal Advisory Council on Occupational Safety and Health (FACOSH), a comprehensive package of training materials has been developed for federal workers by the Department of Defense, OSHA and other federal agencies. The contractor who developed the materials for the government is unfortunately trying to block their use in non-federal workplaces, claiming it retains ownership of the product. To my knowledge, the federal government has not challenged this claim.

The AFL-CIO is concerned that an important source of information and assistance is not available to employers and workers. After spending more than $500,000 of the taxpayers' money, we believe the government should make this information widely available.

There are also non-federal sources of information and assistance available at reduced cost. Many states with right-to-know laws or state OSHA programs have staff and materials to help employers comply with these laws and the hazard communication standard. New Mexico, Virginia, Illinois, and Pennsylvania are among the states that have developed such materials. In addition, the State of New Jersey has developed more than 700 hazardous chemical fact sheets for its right-to-know law. These sheets which are similar to material safety data sheets, are straightforward and easy to understand and are available at a nominal cost from the state. Labor education programs, local coalitions on occupational safety and health (COSH groups), unions and trade associations also have materials available at reasonable cost.

The Small Business Administration working the appropriate trade associations should develop a listing of these materials and make it available to the small business community.

In conclusion, the OSHA Hazard Communication Standard is an important standard for workers and employers of all sizes. The Small Business Administration and small business community should not fight the standard. They should work with OSHA to develop programs and information to help employers meet their responsibilities to protect workers exposed to hazardous chemicals on the job.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

TESTIMONY OF

CHARLES A. CADWELL

DEPUTY CHIEF COUNSEL

OFFICE OF THE CHIEF COUNSEL FOR ADVOCACY

UNITED STATES SMALL BUSINESS ADMINISTRATION

BEFORE THE

HOUSE SMALL BUSINESS COMMITTEE

SUBCOMMITTEE ON EXPORTS, TOURISM AND SPECIAL PROBLEMS

SEPTEMBER 28, 1988

Good morning, Mr. Chairman. Thank you for inviting me to speak before you on an issue that is of great concern to the small business community: the Hazard Communication Standard promulgated by the Occupational Safety and Health Administration.

This rule is the largest comprehensive regulatory scheme attempted by the Department of Labor. The rule could affect more than 4.5 million employers, up to 70 million workers, and it has been estimated to impose upon non-manufacturing businesses between $687 million and nearly $2 billion in compliance costs in the first year. These burdens will fall disproportionately on the smallest employers.

The success of this rule depends on OSHA's ability to provide a workable rule and appropriate guidance to employers. We believe that the rule is poorly designed for the non-manufacturing workplace and that flaws in the rule will limit its effectiveness regardless of any outreach effort. Thus, the rule itself and the issue of how to engage in effective outreach are inextricably related.

The Rulemaking History

Let me begin my remarks by briefly describing the rulemaking history that has given rise to the need for us all to be here today. The Occupational Safety and Health Act, 29 U.S.C.

655(b)(7), directs the Secretary of Labor to prescribe the use of labels or other appropriate forms of warnings in any standard that is promulgated. It is under this authority that a specially-formed group -- the Standards Advisory Committee on Hazardous Materials Labeling -- recommended the development of a generic hazard identification and communication standard in 1975. As is clear from the name of the group, the focus of the original proposal was on the provision of information through labeling. Following the publication of an advance notice of proposed rulemaking in 1977, OSHA published a proposal in 1981 that would have required chemical manufacturers to place detailed chemical identity and warning labels on all containers in their workplaces. The preamble stated that "[t]he proposed standard is designed primarily to provide hazards-related information to employees of employers engaged in manufacturing."

OSHA's original proposal focused solely on hazard warning labels for worker protection. It would have required all hazardous chemicals to be labeled in great detail. Furthermore, this rule was only to be applicable to chemical manufacturers, who objected most strenuously to having to include all of this information about chemical characteristics on labels. How could they effectively label process piping and vessels in which the contents were always changing, they asked; and urged that an alternative be found to the detailed labeling of any place in a factory where chemicals might be.

This proposal was withdrawn in early 1981. After the withdrawal of the proposal, a new notice of proposed rulemaking was issued in 1982, and subsequently a final rule applicable to manufacturers (Standard Industrial Classifications (SIC) Codes 20-39) was issued in 1983. This second rulemaking shifted away from labeling to the idea of reliance on Material Safety Data Sheets (MSD Sheets or MSDSs), which contain detailed information about chemicals and hazards. The manufacturers embraced the concept of MSD Sheets because it was a better alternative for them than having to post the detailed label information throughout their factories. Approximately 350,000 employers were subjected to the manufacturer rule.

OSHA did not include within the rule's coverage non-manufacturers because the rulemaking was based on the decision that the most significant hazards were in manufacturing workplaces. However, OSHA's decision not to regulate these employers was challenged, and the U.S. Court of Appeals for the Third Circuit held that OSHA must promulgate a standard covering the employers in the non-manufacturing sector. Pursuant to the court order, OSHA published in August 1987 a slightly revised version of the 1983 final rule, extending coverage to non-manufacturers. Now, approximately 4.5 million businesses were to be subject to the regulatory scheme. When presented with this revised final rule for clearance, the Office of Management and Budget found that certain provisions of the rule were

unnecessarily burdensome under the Paperwork Reduction Act. It was OMB's oversight under the PRA that focused attention on certain burdens associated with this rule, and until that time there had been no opportunity for public comment. OMB issued disapprovals of three provisions -- those relating to consumer products, multi-employer worksites, FDA-regulated drug products--and directed OSHA to engage in further rulemaking on these issues. However, OSHA's most recent August 8, 1988, notice of proposed rulemaking does not propose changes in the areas of consumer products and multi-employer worksites.

An Inappropriate Emphasis On Material Safety Data Sheets

Allow me, Mr. Chairman, to return to the question of emphasis. I stated a few moments ago that the emphasis of the original 1981 proposal was on labels. It is important to note that neither the emphasis of OSHA's revised final rule, nor the regulated community intended to be covered by it, is the same as that which was originally intended by the agency.

The 1983 final rule for manufacturing employers emphasized reliance on the Material Safety Data Sheets. However, when OSHA proposed to include non-manufacturers, MSDS reliance remained and no analysis was performed to determine if the manufacturer rule was the appropriate model for non-manufacturers, and whether it was the most effective way to protect non-manufacturer employees.

OSHA has made no determination on the record that looks at the appropriateness of MSDSs vis-a-vis labels for non-manufacturers. For example, most non-manufacturers do not have process piping and reactor vessels for which detailed labeling may be inappropriate. Rather, the painter uses cans of paint and turpentine which are already labeled -- and the labels can be improved by the paint manufacturers if necessary -- and the restaurant uses bottles of detergent and pressurized kegs of soda pop which are also labeled.

Does requiring the painter to have an MSDS for the latex paint and the restauranteur an MSDS for the soda fountain add anything to basic employee training on how to avoid chemical hazards? And what is the practical utility of the added paperwork burden on the local beverage distributor and building supply dealer in supplying MSD sheets to all its customers on products which are already labeled by their manufacturers? OSHA has yet to answer these basic questions.

The Burdens on Small Business

More than four and a half million businesses are newly regulated under the HCS. In order to comply, each employer must develop and implement a written hazard communication program; develop a method to train employees and communicate hazards to

employees; develop a system to ensure that all hazardous chemicals are labeled; and procure, maintain and make available MSDSs.

Of these newly covered employers, at least 90 percent are small businesses. Even conservative estimater of the number of burden hours needed for compliance indicate that the time to create, procure and maintain the required paperwork is almost as great as that estimated to fill out income tax forms. This rule is so taxing that even the Federal Government is being given extra time to come into compliance. According to the Department of Labor, the Federal Government has until January of 1989--more than 16 months -- just to start training the few employees with substantial exposure and risk of exposure. The private sector non-manufacturers were given just nine months lead time for overall compliance, and complete training of all employees. Don't be deluded into believing that the presence of representatives of the many active trade associations here this morning means that small business is aware of this rule. Trade associations represent only a fraction of small business owners, leaving the vast majority of employers alone in their efforts to learn about and comply with this rule.

Regulatory Flexibility Analysis

Before we discuss the mechanics of an outreach program, it is important to look at the content of the rule itself to understand its burdens. OSHA's lack of small business analysis has left them with a distressing lack of knowledge about the non-manufacturing sector. Outreach and implementation efforts would be greatly improved if OSHA performs a complete Regulatory Flexibility Analysis to analyze the actual impact of the rule with an eye toward finding ways to modify and reduce the burdens and increase compliance.

The Office of Advocacy has attempted to work with OSHA on this rule for almost two years, and OSHA has not yet fulfilled its obligation to bring itself into compliance with the Regulatory Flexibility Act. The Act requires federal agencies to assess the impact of their proposed rules on small businesses and to consider alternative ways to regulate without significantly impairing the effectiveness of the rule. We understand that OSHA has met with small business representatives during the course of this rulemaking. Based on the problems the small business community has raised with OSHA, what has OSHA done to respond? Has the rule been modified at all to reflect small business concerns? OSHA has had the opportunity to make changes

in the original manufacturing-oriented standard to be more responsive and to bring itself into compliance with the Act, but has failed to do so.

One of the fundamental questions in approaching hazard communication in the non-manufacturing sector is whether it would be more effective in practice to rely on employee training and label information for common consumer products -- and require MSD sheets only for hazardous chemicals not normally available to consumers -- or to require vast numbers of MSDSs to accompany each and every one of the more than half million hazardous chemical products -- ranging from household bleach to "white out" -- which are used in shops, offices and bakeries. We submit that the former is the appropriate emphasis for the non-manufacturing sector: an emphasis on employee education and training, labels, and the judicious use of MSDSs.

In addition, the present regulatory scheme which relies so heavily on MSDSs may not be the one that will create the safest and healthiest workplaces because employees may be the victims of "information overload." According to the Business Council for Effective Literacy, there are about 14 million workers who read at a fourth-grade level, and 23 million who read at no better than an eighth-grade level. But studies show that 70 percent of the reading material in a cross-section of jobs nationally is written for a comprehension level of at least ninth grade.

Material safety data sheets are probably written at an even higher level, calling into question their usefulness in providing comprehensible information to workers. Thus, by failing to do a proper analysis, OSHA may have missed out on the opportunity to devise the best regulatory scheme for businesses and workers.

How can OSHA effectively engage in outreach to explain the application of the consumer products language in the standard? The rule includes an exemption for consumer products which applies in circumstance "where the employer can demonstrate" that the chemical is used "in the same manner as normal consumer use" and results in a "duration and frequency of exposure which is not greater than exposures experienced by consumers." (Emphasis added). What type of outreach can explain how to apply a subjective exemption such as this one? This formulation is no exemption at all since it will be difficult, if not impossible, for an employer to know in advance whether he or she can demonstrate for an OSHA inspector that the use of certain products is in the identical manner, duration and frequency as that of the prototypical consumer. As a practical matter, employers may therefore be forced to procure and maintain MSD Sheets for all common household products used in the workplace, which underscores the problem of too great an emphasis on MSD Sheets.

In the area of consumer products, for example, OSHA should seriously consider the use of the most significant consumer products alternative: the formulation contained in Section 311(e)(3) of the Superfund Amendments and Reauthorization Act (SARA). The SARA definition focuses on the "form and concentration" of products packaged for use by the general public. Congress recognized that because employers and employees are familiar with such common consumer products, their hazards, and their usual uses, the provision of detailed MSDS information for all such products is unnecessary for right-to-know purposes. In all such cases, the products will be labeled in accordance with relevant safety statutes and regulations, and MSD Sheets will always be available on request from the manufacturers should additional information on a particular product be desired.

Another example of a provision which will be difficult to explain to the public is the treatment of multi-employer workplaces. The rule requires each employer at a common site to exchange and maintain MSD Sheets at that site for immediate access. The construction industry is particularly concerned with the paperwork burdens imposed by such a requirement. There are many questions concerning this provision that will make implementation difficult. For example, what happens when a new employer arrives at the worksite: must all work stop until MSD Sheets are exchanged? Where at a worksite are the MSD Sheets to be kept for access? And when the painter stops by the local

hardware store for a can of trim paint, will the retailer be required to give him an MSD Sheet, or only tell him the name and address of the manufacturer? If the latter, can the painter use the paint right away, or must he delay completing the job until he writes to the manufacturer and receives an MSDS in the mail? Again, had OSHA engaged in a complete Regulatory Flexibility Analysis affording the opportunity to consider other regulatory options -- such as a central chemical list to be kept on-site with MSD Sheets to be made available on request the next day, or a generic approach which relies primarily on comprehensive training and labeling, supplemented by industry-specific guidance on the hazards of the chemicals likely to be encountered -- it would not be facing such extraordinary outreach problems.

Outreach Efforts

One concern that we have, Mr. Chairman, is that small businesses across the nation are unaware of the their responsibilities under this regulatory scheme as it presently stands. But what efforts have been made by the regulators to reach these small business owners? The unfortunate answer is that little has been done by OSHA to reach those affected; outreach efforts have been all but nonexistent.

In September 1988, OSHA announced the release of its Compliance Kit for Hazard Communication, for a rule that was

scheduled to become effective on May 23, 1988. Employers now have an opportunity to review OSHA's first attempt at compliance assistance. This booklet must be purchased at a cost of $18.00, and is available only by mail from the Government Printing Office. It takes at least four to eight weeks to receive the kit from GPO. This is the extent of outreach to date. Even if small businesses obtain that kit, we are concerned that it will not provide them with sufficient guidance. Also, the material provided does not include all relevant information because parts of the rule were delayed in court proceedings. OSHA should take the opportunity afforded by the delayed issuance of the consumer product definition and multi-employer worksite provision to issue better guidance. A better idea is for OSHA to provide separate materials for small businesses.

Suggestions For OSHA Efforts

The Office of Advocacy is firmly committed to the idea behind Hazard Communication. Since one of the goals of this hearing is to come up with suggestions to ease the implementation of the rule, I would like to mention a few ideas that could be a tremendous value to the small business community and would most likely fit within OSHA's budget.

First, the need for outreach materials is paramount. OSHA historically has not engaged in outreach for its rules, and in

this case the lack of guidance is promoting confusion in the regulated community. Other agencies routinely perform outreach, and a look at some agency efforts will be illustrative. The Environmental Protection Agency (EPA) has consistently done a good job in promoting its rules among the regulated community. Prime examples of successful outreach include Underground Storage Tanks and Small Quantity Generators.

Much of the success of the Underground Storage Tank outreach program can be attributed to the cooperative relationship between the Office of Underground Storage Tanks and industry groups. For example, EPA provided camera ready copies of its brochures, What's in the Pipeline? and Musts for USTs, to industry groups, who printed and distributed the brochures to tank owners. These brochures were plain English versions of the proposed and final rules, directed to gasoline station and other tank owners who would not be likely to read the Federal Register.

EPA also produced two video tapes. The first tape was produced with the Fire Protection Association to teach fire officials how to check for environmental hazards during their inspections of underground storage tanks. The second tape was a cooperative effort between EPA and industry to develop a training tape for workers who install underground tanks. The

goal of this tape is to ensure proper installation procedures are followed, and thus the likelihood of environmental and health hazards are reduced.

EPA developed a similarly comprehensive outreach program for Small Quantity Generators. For example, EPA printed and distributed a handbook which explained how to complete a manifest and to help small businesses comply with the interim requirements during the rule development process. When the final rule was promulgated, EPA published Understanding the Small Quantity Generator Hazardous Waste Rules to help small businesses meet the new requirements. Approximately 650,000 copies of this brochure were distributed. Working with the Public Broadcasting Service, EPA produced a teleconference that was aired in over 130 cities. The teleconference was later made available on video tape. EPA also participated in workshops sponsored by various groups. Finally, EPA provided grants to states to develop their own programs.

Another example of a recent EPA outreach effort has been its cooperation with the SBA's Regional Office in Region VII, where a guide is being prepared for small business owners to help simplify compliance with EPA's Title III Community Right-to-Know requirements under SARA and to help small business owners understand the link between Title III and the Hazard Communication Standard. Although asked, regional OSHA officials

were apparently unwilling to work in full partnership with SBA and EPA to develop this needed tool.

Another agency that engages in good public outreach--notwithstanding its often unpopular image -- is the Internal Revenue Service. The IRS has set up toll free telephone lines to respond to taxpayer questions in several languages, and through its Problem Resolution Office, attempts to expeditiously resolve taxpayer difficulties. The IRS has also instituted a telephone service for deaf taxpayers who have access to TV/Telephone-TTY equipment and a telephone service to check the status of refunds. Information is also available in braille for the blind. Numerous publications have been developed to assist taxpayers in understanding their rights and obligations. These publications and services are available at no charge. To better educate taxpayers the Services conducts Small Business Tax Workshops in conjunction with the SBA which concentrate on recordkeeping and withholding, often in conjunction with the SBA. Through its VITA program, the IRS elicits the help of volunteers in assistance and outreach. It also provides counseling for the elderly through its TCE program. Through Operation Link, the agency opens better channels of communication with private practitioners and through Student Tax Clinics makes students aware of their obligations. Additionally, the IRS has organized advisory

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groups to assist in understanding the problems faced by practitioners and taxpayers and to provide fresh insight into solutions.

The one document that OSHA has developed for HCS will not be sufficient to meet the needs of the entire regulated community. These materials need to be supplemented with others addressed directly to the concerns of very small employers. According to the Small Business Data Base maintained by the Office of Advocacy, there are 3.2 million businesses with fewer than 20 employees. These businesses do not have toxicologists and industrial hygienists on their limited payrolls. As non-manufacturers, they have very different concerns than do larger employers vis-a-vis HCS and deserve OSHA's attention.

Second, OSHA should evaluate the benefits to be derived from the use of generic HCS programs. For example, OSHA should consider modifying and making available the existing Federal Hazard Communication Program (FHCP) developed in conjunction with the Federal Advisory Council on Occupational Safety and Health (FACOSH). Also OSHA should review for approval the generic training programs developed by trade associations and other private-sector organizations. This could greatly reduce the start-up costs and paperwork burdens on small firms. Incidentally, a few of the states that operate their own programs

have materials and training tapes available, sometimes through public libraries, that have been a big help to small firms.

Third, OSHA should make a dedicated effort to inform the regulated employers about this rule. This may require directly mailing to employers information about the HCS and how to comply with it. Just last year, the Immigration and Naturalization Service reached those it newly regulates in this very way. INS mailed to employers a "Handbook for Employers" with "Instructions for Completing Form I-9 (Employment Eligibility Verification Form)". This non-threatening 16-page booklet was simply written and contained a special section with questions and answers about compliance. Seven million booklets were printed and mailed. The costs? Printing costs were less than $2 million and postage costs were approximately $900,000. This is certainly an outreach option OSHA should consider for a rule as important to the health and safety of workers as is the HCS.

The SBA would be happy to offer its assistance to OSHA in disseminating any materials it develops. As has been done for other federal agencies, the SBA would send any outreach publications OSHA develops for the HCS to local SBA offices throughout the country for circulation to employers.

In order to promote compliance, the SBA at its own initiative has publicized the rule through our monthly newletter

and is presently serving as a referral service for businesses. The SBA Answer Desk toll-free hotline is referring callers to the appropriate regional or local Department of Labor office for HCS information.

OSHA should also be contacting local chambers of commerce, local trade associations and local media. OSHA should be advertising the rule and offering assistance through all available electronic and print media. One possibility would be the provision of flyers and advertisements to various groups, such as trade press, for inclusion in their publications.

Finally, for this program and for the success of future rulemakings, the Department of Labor should establish a Small Business Ombudsman who can work with the regulated community to improve the quality of rulemaking and outreach efforts. EPA has done just that, and it has greatly improved in its sensitivity to small business concerns.

Conclusion

In conclusion, OSHA should ensure that its continuing rulemaking is not just perfunctory and use its rulemaking to properly address small business concerns that the rule is

unworkable. Thus, OSHA would not only meet its obligations under the Regulatory Flexibility Act, but also issue a better rule.

OSHA must also acknowledge its responsibility to inform the regulated community of the existence of the rule and it must provide adequate, focused and comprehensible direction on compliance procedures. To achieve this goal, the guidance must be tailored specifically to small business. OSHA has approached the problem exactly backwards. They have provided guidance to their inspectors before reaching and providing guidelines to the businesses that have to comply.

STATEMENT OF
FRANK A. WHITE
DEPUTY ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON EXPORTS, TOURISM, AND SPECIAL PROBLEMS
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

September 28, 1988

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today to discuss the Hazard Communication Standard of the Occupational Safety and Health Administration (OSHA). I am Frank White, Deputy Assistant Secretary of Labor for Occupational Safety and Health. With me at the table is Jennifer Silk, an OSHA health scientist, who has been project officer for the standard since 1981.

I will begin by describing OSHA's overall responsibility for workplace safety and health. OSHA was established pursuant to the Occupational Safety and Health Act of 1970. This statute grants the agency broad authority to promote the safety and health of employees on the job. OSHA's authority extends, with a few exceptions, to private sector employers with one or more employees. The OSH Act authorizes OSHA to establish occupational safety and health standards, conduct inspections to enforce the standards, issue citations and propose monetary penalties for violations of the law, require employers to abate hazards, provide for training and education, and encourage employer-employee cooperative programs to reduce workplace hazards. Thus, OSHA has a wide range of tools to use in preventing occupational

hazards and to assist employers and employees in responding to dangers present in their workplaces.

The OSH Act encourages the States to conduct their own federally-approved job safety and health programs. At present, twenty States and two jurisdictions operate comprehensive OSHA programs or "plans." Two other states -- Connecticut and New York -- operate partial plans covering only state and local government employees. The States maintain inspection forces and operate safety and health programs that are required to be at least as effective as the Federal program. OSHA monitors the State plans carefully to ensure their effectiveness.

One of OSHA's primary concerns for the last eighteen years has been the effective protection of employees exposed to hazardous chemicals. According to a survey conducted by the National Institute for Occupational Safety and Health (NOISH), there are as many as 575,000 hazardous chemical products used in American workplaces. OSHA estimates that at least 32 million people are exposed to these chemicals while they work. Chemical exposures occur in every type of industry.

There are numerous potential adverse health effects that can result from such exposures. They range from simple headaches to cancer. For the most part, all of the effects are preventable if exposure is controlled or avoided. In addition, workers can be harmed by accidents resulting from the physical hazards of the chemicals, such as the potential for fires or explosions.

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The specific incidence of chemical source illnesses is difficult to quantify. Chemicals cause illnesses that may also be caused by other sources; thus it is often difficult to link the chemical exposures to the illnesses that occur. Furthermore, employers and employees have often been unaware of the potential health effects of the chemicals in their workplaces, and thus are unlikely to link exposures to the illnesses. Complete information regarding a chemical, its potential health effects, and appropriate protective measures can help prevent such occurrences.

Congress recognized the importance of conveying such information to workers when it included in the OSH Act provisions for ensuring that occupational health standards require employers to apprise employees of the hazards to which they are exposed. Every substance-specific standard OSHA has promulgated has included such requirements. The substance-by-substance approach is a slow one, however, and has not resulted in information being available for a large number of the chemical products in the workplace.

The Hazard Communication Standard (HCS) is a generic approach to ensuring that information is available to all exposed workers for all potentially hazardous chemical products. Initially, the rule applied only to manufacturing establishments. In August 1987, however, it was expanded to cover all workplaces where employees are exposed to hazardous chemicals. OSHA believes that all exposed employees are entitled to information,

regardless of the size of business they work in or the number of chemicals involved.

The Hazard Communication Standard is based on the simple premise that workers have both a need and a right to know the identities and hazards of the chemicals they work with, as well as the associated protective measures. Employers need the information to fulfill their obligations to provide a safe and healthful workplace. Before OSHA issued its standard, employers were known to complain that they could not fulfill those obligations because they were unable to determine the components of the chemical products they used at work. Now, with this information provided to them under the standard, employers can implement controls for exposure and, in general, can design better protective measures for their workers. These may include such controls as substitution of less hazardous materials, or selection of the appropriate material to prevent skin absorption of a chemical. Together, the actions of employees and employers will result in decreased exposures, and subsequently in a reduction of chemical source illnesses and injuries.

The Hazard Communication Standard requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import. This hazard evaluation process is the most technical part of the rule. It appeared to OSHA -- and our rulemaking record confirmed this belief -- that those employers who produce or distribute chemicals should have the primary responsibility for providing information about those

chemicals. Therefore the producers must ensure that every container that leaves their workplaces is labeled with the required information. They must also provide a material safety data sheet automatically with the first shipment of a chemical, and with the next shipment after the sheet is updated.

To ensure that this information actually reaches the workplaces where employees are being exposed, participants in the rulemaking supported inclusion of distributors in the transmittal process. Thus, distributors also have a duty to ensure that labels are on every container and that data sheets are provided at the time of the first shipment. This is the most efficient way to ensure that information is received before exposures begin. To effectively prevent the occurrence of illnesses and injuries, the information must be in the hands of the employees and employers prior to actual exposure.

The required information is to be communicated to workers in three ways -- through labels on containers, through the more detailed information bulletins called material safety and data sheets, and through training. An employer's plan for implementing these provisions of the rule constitutes the facility's hazard communication program.

Labels provide a brief summary of the hazards of the materials, and an identity for the product that can be used to access more detailed information on the material safety data sheets. These sheets provide extensive data regarding the chemical (such as chemical identity, and physical and chemical

characteristics), as well as critical information concerning the potential health effects, the way the chemical enters the body of the exposed workers, recommended exposure levels, proper protective measures, and emergency and first aid procedures. In the training sessions, workers are instructed how to use such information, as well as trained regarding the hazards and the available protective measures in their own workplaces.

Employers who merely use chemicals, rather than produce them, are able to rely on the information provided by their suppliers. Most non-manufacturing employers would be in this category. Thus, the containers they receive will already be labeled, and they will be given a material safety data sheet at the time of the first shipment. The responsibilities of such employers are limited to establishing a hazard communication program to make the information available to workers and to train them to access it properly. Employers using chemicals have no independent duties to evaluate the hazards of chemicals. For purposes of their hazard communication programs, they must simply obtain and maintain the information provided by their suppliers.

Our rulemaking record indicates that all three of the described means of communication -- that is, material safety data sheets, labels, and training -- are necessary for the proper functioning of the standard. The HCS requirements for the generation, distribution, and dissemination of information regarding chemical hazards are based upon extensive industry experience in these areas, as well as the needs of workers and

the recommendations of occupational safety and health professionals.

As early as 1974, OSHA received recommendations regarding the implementation of its statutory mandate to apprise employees of hazards. NOISH recommended that OSHA promulgate a standard covering all workplaces where employees are exposed to hazardous chemicals. Its recommendations included labels, materials safety data sheets, and training.

In 1975, an advisory committee of representatives of labor, management, and the public submitted a report to OSHA which also recommended a rule covering all workplaces. The committee's recommendations similarly included labels, material safety data sheets, and training.

As the agency continued to study the issues, it found that those recommendations were consistent with progressive industry practices. Material safety data sheets had been developed and circulated for many years. In OSHA's rulemaking record, there is an article published by a chemical industry representative in a periodical of the 1950's regarding the utility of data sheets. There were requirements for material safety data sheets in the maritime industries before the creation of OSHA. Current requirements are very similar to those.

A number of States promulgated worker right-to-know laws while OSHA was involved in promulgating its Hazard Communication Standard. These laws all involve similar requirements for communication of information, and generally use the basic

strategy of labels, material safety data sheets and training. OSHA has examined these laws and has discussed implementation experiences with a number of the OSHA-approved State plan states.

It should be noted that approximately half of all employees in non-manufacturing were covered under existing State laws at the time OSHA promulgated its rule expanding the scope of the Hazard Communication Standard. Enforcement experience in the States with pre-existing rules in non-manufacturing indicates that the rule's requirements are feasible, and that employers are complying.

The use of both labels and material safety data sheets to transmit hazard information is also becoming well-established internationally. A Canadian rule which is similar to our standard is currently being implemented. There are European standards for labeling and data sheets, and similar rules are also being considered in a number of other countries such as Australia.

The information generated under the U.S. standard is also being used to accomplish other purposes, such as providing information to communities for emergency planning purposes. The 1986 Amendments to the Superfund legislation included requirements for community right-to-know that were built upon the requirements of OSHA's Hazard Communication Standard for material safety data sheets. In addition, an Administration-endorsed alternative for legislation in the last session of Congress to require notification of workers at risk from hazardous exposures

was also based on the OSHA standard. The Administrator of the Small Business Administration was an active proponent of that approach.

Thus promulgation of the Hazard Communication Standard could be said in a certain sense to have made common practices the law, and, by so doing, to have assured all employees of equal access to information and thus of equal protection under the law.

OSHA only began conducting agency-initiated, or "programmed," inspections for compliance with the standard in the non-manufacturing sector on August 1. Therefore the agency has limited federal enforcement experience in those industries. Because of a restriction of OSHA's annual appropriation, the agency cannot conduct programmed safety inspections in businesses in low-hazard industrial categories if they employ ten or fewer workers. For the most part, enforcement activity in establishments of that size, regardless of the degree of hazard, is limited to responding to reports of accidents or employee complaints. The employers are, of course, required nonetheless to be in full compliance with the provisions of OSHA standards, including the Hazard Communication Standard.

OSHA has examined the feasibility of the rule as it applies to the non-manufacturing sector and has found the requirements to be feasible. This examination included consideration of the costs to small businesses and also addressed such issues as turnover rates.

Our conclusion that the standard is feasible is amply supported by the experiences of the State-plan States which covered non-manufacturing sectors prior to promulgation of the expanded Federal standard. Enforcement data indicate that a large percentage of inspected employers were found to be in compliance in those states, a clear indication that the requirements are feasible.

According to OSHA's cost analysis, typical establishments in most industry sectors would incur compliance costs of less than $500 in the first year. In only one industry sector does the average total first year cost exceed $800 per establishment. The average first year cost per exposed employee is less than $100, or less than $2.00 per worker per week.

The benefits of the standard result from an expected reduction of occupational injuries and illnesses that are chemically related. OSHA projects that the standard will prevent twenty percent of the injuries and illnesses that would have occurred without the rule. The effect on chronic illnesses and cancers will not be seem immediately because of the long latency period for such diseases. The reduction of these cases will happen over a longer time period.

While it is clear that the benefits of improved communication of chemical hazards to workers are well worth the effort such communication takes, for some employers, the initial effort called for could appear overwhelming. We recognize that

employers -- particularly small business employers -- may need assistance in complying with the standard.

There have been many private sector initiatives to help employers implement the requirements of the rule. In fact, there is virtually a cottage industry of small business consultants marketing a variety of materials to help employers manage chemical inventories, prepare and maintain labels and material safety data sheets, conduct training programs, and provide a myriad of other related services. A list of such resources has been compiled. Although OSHA does not recommend or endorse such products, we have made this list available to employers who request information about private sector materials.

Trade associations and professional organizations have developed many materials to help employers comply. These are particularly useful because they are usually designed for specific industries and thus provide specific guidance for employers in that type of business. OSHA has, when requested by these organizations, provided informal review of these materials.

OSHA has also provided assistance to employers in complying with the rule. At the time the standard was published in August 1987, a simple booklet describing its requirements was made available to the public. The booklet, entitled Chemical Hazard Communication, is available free of charge. OSHA has distributed approximately 258,000 copies of the publication, as well as 296,000 copies of the original and expanded standard itself.

OSHA has designated a Hazard Communication Coordinator in each Regional Office to facilitate response to public inquiries and provide a resource for workshops, seminars, and other types of outreach. Last December these coordinators participated in an intensive four-day training session on the expanded rule. Policy and enforcement issues were discussed in detail; the experience of States in enforcing right-to-know rules was also discussed, as was information on current developments in the field of hazard communication, such as a recently adopted industry consensus standard on labeling. Through this outreach effort, implemented by the regional coordinators, the agency helps to ensure a uniform approach to implementation of the rule.

Agency staff has responded to literally thousands of telephone inquiries and hundreds of letters concerning the rule. We have also held or appeared at many meetings with affected employers and their representative trade associations to explain the rule and answer questions.

Virtually all addresses delivered by key agency officials mention the Hazard Communication Standard in order to ensure that knowledge of its existence and requirements is widespread. In fact, standard speech materials have been provided for this purpose. The agency has tried to respond to every request from trade associations and professional organizations for speakers on hazard communication. In recent years agency officials have given literally hundreds of speeches have been given on the Hazard Communication Standard.

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On August 8, OSHA published a Notice of Proposed Rulemaking to modify the Hazard Communication Standard. As part of that publication, the agency published a non-mandatory appendix which provides guidance for employer compliance. This step-by-step approach should simplify compliance activities for small employers.

In addition, the agency has developed a Hazard Communication Compliance Kit that offers a step-by-step approach to compliance with checklists, a sample hazard communication program, a sample training program, and a list of sources of help. This kit is available from the Government Printing Office for a modest fee of $18, which entitles the subscriber to automatic receipt of any future revisions. Besides these informational materials to aid in compliance with the standard, the agency has other ongoing programs which provide assistance. OSHA-funded State consultants offer free onsite consultation services to employers upon request, with priority given to small business employers. The consultants offer guidance on what constitutes an effective occupational safety and health program, as well as advice on recognizing and eliminating specific hazards. State consultants have visited approximately 75,000 workplaces since the Hazard Communication Standard went into effect in the manufacturing section in 1986. These consultants are prepared, upon request, to assist any employer needing advice on how to comply with the standard.

Training and education, a requirement of the standard, is an essential element of any successful employer occupational safety and health program. OSHA has assisted in the development of safety and health expertise in unions and employer organizations through the agency's New Directions education and training grants. Several of the organizations which now receive such grants are using the funds to instruct their members on the Hazard Communication Standard. The American Electronics Association is one of these; it includes material on the standard in the training courses which its members receive.

The Hazard Communication Standard has been regarded by occupational safety and health professionals as the most significant rule promulgated by OSHA. Its generic, results-oriented approach, will result in millions of American workers receiving necessary information about the hazards they are exposed to while working. OSHA recognizes a responsibility to assist employers, particularly small business employers, in understanding the rule. As I have indicated, OSHA has numerous sources of assistance to offer small businesses in addition to the considerable private sector resources that are available to them. A simple phone call to one of our 97 field offices, State plans, or consultation programs throughout the country may take care of an employer's specific concern. OSHA's employees will make every effort to explain the standard and provide assistance in complying.

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That completes my prepared remarks. I will now be happy to answer any questions.

James E. Gaffigan
Vice President, Governmental Affairs

American Hotel & Motel Association

1201 New York Avenue, NW
Washington, DC 20005-3917
Tel. 202/ 289-3100
Fax 202/ 289-3199

Educational Institute of AH&MA
1407 So. Harrison Road
East Lansing, MI 48823
Tel. 517/ 353-5500
Fax 517/ 353-5527

September 28, 1988

The Honorable Norman Sisisky
Chairman
Subcommittee on Exports, Tourism
and Special Problems
B363 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sisisky:

We appreciate the Subcommittee's interest in exploring the impact of the expanded hazard communication standard on small non-manufacturing businesses.

The American Hotel & Motel Association is a federation of state and regional lodging associations including approximately 9,000 properties and representing almost 1.4 million rentable rooms. AH&MA provides operational, technical, educational and marketing services, as well as governmental affairs representation, to the lodging industry.

A majority of the lodging properties represented by the association are small businesses. Since the hazard communication standard was expanded to include these properties in its coverage, a great deal of confusion ensued. Even hotels and motels affiliated with major chains, who have additional resources and technical expertise upon which to draw, have had difficulties with "hazcom." This comes, of course, as no surprise since even the courts have been issuing contradictory rulings.

The problems with "hazcom" range from its effective date to exactly what is covered, for example, the consumer product question which is still under discussion. And how many small businesses are going to involve themselves in a discussion of the definition of "article"?

When hazcom was (supposed to be) extended to hotels and motels, we began trying to explain it. We also cautioned our members that there were sure to be a number of programs offered them that would explain hazcom. We suggested they take it a step at a time. The guidance now coming from OSHA in the form of a compliance kit for $18 is a step in the right direction. For many, however, it's late ... and getting later. We ordered a kit for our library from GPO last week and were told to expect it in four or five weeks.

We are not writing to question the law or the regulations, but to draw attention to the implementation. When regulations this complex are issued and are intended to cover so many businesses, some direction, guidance and leadership should accompany them. Certainly it should be available in adequate time for compliance or the effective date for enforcement should be delayed.

Another "side-effect" coverage of hazcom is the Emergency Planning and Community Right to Know Act regulations which come under the Environmental Protection Agency. If you're covered by OSHA's hazcom, you may be covered by EPA's EPCRA. In this case you have to know if the chemicals or chemical products at your property are "extremely" hazardous or just "plain" hazardous by consulting a lengthy EPA chemical list. Then you have to determine if you have a reportable quantity. Finally you have to give your MSDS inventory list to three different groups: a) regional EPA, b) local planning committee and, c) fire department.

The paperwork never stops but at least EPA has a toll free number. Last spring a business group that tracks paperwork said that 7.3% of the GNP goes to filing federal forms. That figure was issued before OSHA's hazcom standard became effective for the non-manufacturing industries. It boggles the mind to think what that percentage would be now.

We would encourage the Subcommittee to explore what more OSHA can do now and how future regulatory problems such as this could be handled. Presently OSHA has 10 hazcom coordinators throughout the country. That's clearly not enough. We would hope that at a minimum OSHA can reach out to small business not with inspections but with help. A toll free number should be available and be publicized.

While we have tried to assist our membership in complying with the regulations not every hotel and motel in the country is associated with AH&MA. What of the rest?

Again, we thank the Subcommittee for affording us the opportunity to comment.

Sincerely,

James E. Gaffigan

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WASHINGTON GOVERNMENT
AFFAIRS OFFICE
Suite 305
1825 K Street, N.W.
Washington, D.C. 20006
202/223-6222

The National Association
of Full-Service Plumbing,
Heating, Cooling and Piping
Products Wholesalers

American Supply Association
20 N. Wacker Dr.
Chicago, Illinois 60606
312/236-4082

Peter W. Schwartz
Executive Vice President

October 11, 1988

The Honorable Norman Sisisky
Chairman
Subcommittee on Exports, Tourism,
and Special Problems
House Small Business Committee
B 363 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Sisisky:

On behalf of the American Supply Association (ASA), I wish to present our views on OSHA's Hazard Communication Standard. ASA is a national association of distributors of plumbing, heating and cooling products. Our members sell primarily to plumbing, heating and mechanical contractors, who install products we sell in various construction projects. The members of ASA are considered distributors of hazardous substances under the OSHA Hazard Communication Standard.

ASA is very pleased your Subcommittee is investigating the impact of Haz Com on small business. This is a serious problem for many of us in the small business community and we applaud your leadership in pursuing the issue.

Mr. Chairman, the Hazard Communication Standard is not working. What started out as a well-intentioned idea to inform and protect workers using hazardous chemicals in the manufacturing process has been carried to extreme proportions. Wholesalers, contractors, retailers and workers are being literally buried in MSDSs. This avalanche has created an information overload which not only fails to inform workers, but actually may endanger them -- since OSHA is placing such reliance on the ineffective MSDS.

And for ASA wholesalers, the financial cost of this exercise is enormous. A typical ASA wholesaler has at least 150 products among his product line which fall within the purview of the standard. As wholesaler-distributors, our role is to distribute the MSDSs on these products to our customers.

There are several possible methods for doing this. The first is to provide an MSDS with the first shipment of each product to each customer. Not only is this a costly alternative, but it is also extremely difficult to administer, involving a highly labor-intensive process. It requires someone to keep track of which customers have received which MSDSs. This can be a confusing, impractical task when dealing with 2000 customers and hundreds of products.

To avoid this administrative nightmare, many wholesalers are choosing a second alternative: creating a catalogue or binder of all MSDSs for all products and then distributing these catalogues to all customers. However, while this eliminates the administrative headaches, it also carries with it a very high price tag. When you add up the printing and postage costs, the initial compliance cost for an ASA member ranges from $8,000 to $30,000.

And, when all is said and done, the only real accomplishment is that the contractor receives a notebook full of each and every one of our MSDSs -- not just for the products he buys from us, but for all the products we carry. Bear in mind also that the contractor deals with many supply houses, with the result that an average contractor could receive 10 or more MSDS binders from plumbing suppliers alone, not to mention those he will receive from electrical, air conditioning and other distributors.

ASA and its regional affiliates are trying to come up with some other possible ways to comply with the Standard that will be more cost effective and have more positive results. However, absent some guidance from OSHA on the ideas we are pursuing, we are limited in implementing any plan to help our members to comply.

An additional problem we have encountered is that, in many cases, manufacturers appear to be preparing MSDSs on products which should not be included under Haz Com. Understandably, the manufacturers want to protect themselves by being overly cautious. From their perspective, they would rather create unnecessary MSDSs rather than risk exposure to potential liability for failure to provide an MSDS. Wholesalers, who are not in a position to differentiate between MSDSs that are necessary and those that are not, become obligated to pass them along the distribution chain. The result, aside from the obvious financial cost, is that the already unworkable MSDS system becomes even more clogged.

Employers and employees alike are perplexed by a standard which treats highly toxic chemicals the same way it treats threaded pipe. Both require a lengthy MSDS, yet the degree of danger is significantly different. By expanding the scope of the Standard

so broadly and by providing such an overabundance of information, the value of the most critical information is seriously undermined.

Haz Com does not work. By trying to do too much, it fails to accomplish its intended goal. The existing standard overwhelms employers and their workers, thereby leaving employees without the kind of practical, understandable information they need about some very dangerous products.

Mr. Chairman, we urge Congress to take the necessary action to remedy the problems associated with the Hazard Communication Standard. This association stands ready to work with both the Congress and OSHA towards development of a meaningful and effective standard.

Sincerely,

Frank Finkel

Frank Finkel
Chairman
ASA Government Affairs Council

NATIONAL ASSOCIATION of the REMODELING INDUSTRY
1901 North Moore Street, Suite 808 • Arlington, Virginia 22209 • (703) 276-7600

STATEMENT OF THE

NATIONAL ASSOCIATION OF THE REMODELING INDUSTRY®

ON THE

OSHA HAZARD COMMUNICATION STANDARD

BEFORE THE

SUBCOMMITTEE ON EXPORTS, TOURISM & SPECIAL PROBLEMS

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1988

The National Association of the Remodeling Industry® (NARI®) appreciates the opportunity to submit comments to the Subcommittee on the implementation of the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). NARI® is not opposed to worker safety, however, application of the HCS to the remodeling industry presents a number of problems. It is hoped, through further discussion and review, that an effective and workable program can be achieved.

NARI® is a non-profit trade association committed exclusively to the service of the professional remodeling industry. Representing over 4,500 professional remodeling contractors, product manufacturers, distributors, wholesalers, trade and consumer publications, utilities, and lending institutions, NARI® stands as the spokesgroup of the industry and as an ally to the nation's homeowners.

These comments will address a number of problems that members of NARI® have with the HCS including education, the Material Safety Data Sheets (MSDSs), the consumer products definition, the added costs involved, and the multi-employer site nightmare. While we do not propose to have an alternate system, we will offer some suggestions that should improve the situation, if adopted.

The construction industry has temporarily been granted a stay with respect to the implementation of the HCS. Meanwhile,

NARI®, as a national trade association, has attempted to educate its membership on the requirements for compliance as the standard is currently written. This has been no easy task which often generates more questions than it answers.

The standard is terribly confusing and vague to those of us who are employed to monitor government regulation and especially to the average small business home improvement contractor whom we represent. OSHA has done very little to educate those it intends to regulate. Although the standard was published in the Federal Register, it is extremely unlikely that any remodeling contractor subscribes to it.

Just recently, OSHA has produced a compliance kit. It costs $18 and must be ordered from the Government Printing Office, which takes several weeks for delivery. This kit comes nearly one year after the rule was imposed. NARI® has made available to its members a handbook developed by the private sector. Unfortunately, we cannot be 100 percent sure that it is sufficient.

OSHA's outreach program, with respect to the HCS, appears to be inversely related to its pervasiveness. We fear that a great number of contractors, particularly those who are not members of NARI® or another trade association, will first feel the impact of this standard upon an OSHA inspection wherein they can face up to a $10,000 fine.

NARI® suggests that OSHA build on its outreach educational program perhaps through a mass mailing to all employers, a central MSDS file, a toll-free hotline and greater publicity throughout the country. It must be emphasized that, if the contractor is in any way remiss in compliance with the HCS, a Pandora's Box of liability is opened.

The most cumbersome requirement of this standard is the collection, maintenance and use of the Material Safety Data Sheets (MSDS). These documents are supposed to be provided by the manufacturer to the supplier to the end user. In a great many instances, this is not the case.

The contractor suffers from either the lack of appropriate MSDSs or is bombarded with MSDSs. Oftentimes, the supplier of products containing hazardous chemicals does not receive the corresponding MSDSs from the manufacturer so it falls on the contractor to track them down. In other instances, a manufacturer may, on occasion, forward MSDSs for his/her entire inventory because of the lack of time to search for the appropriate sheets. This then puts the burden again on the contractor to obtain the correct information.

Remodeling contractors are generally involved with a number of projects at any one time which vary in scope and necessary

materials. The types of products containing hazardous chemicals used changes from one job to the next and over the period of a year can number in the thousands. Again, under the HCS as currently written, the contractor would have to shift and search through piles of paper to determine which MSDSs are necessary for each job and then carry them to each job site.

The responsibilities do not end once a contractor obtains all the necessary MSDSs for his/her many and varied projects. The information must be constantly updated since there is no guarantee that the MSDSs in hand are the most recent. It is believed that OSHA's estimated time necessary for compliance of eleven hours is grossly understated.

Despite all the effort that must be dedicated to obtaining the required information, the MSDSs have very little practical utility. The information often contained on these sheets is written by chemists and for chemists. They are much too technical for everyday use. The average employee on a home improvement job site already knows not to drink paint and not to apply hot tar to his skin. Furthermore, it is highly unlikely that the employee cares to know or understands what the specific gravity of the chemical is.

If an employee needs to know what to do in an emergency, the first place he/she is likely to look is the product's label,

which contains sufficient emergency information. It is unreasonable to believe that the employee will track down a large volume of MSDSs and read up on the chemical that is in his/her eye. NARI® is not trying to dismiss or belittle the importance of emergency care information, however, we believe that the MSDSs are not practical for use by the average construction worker.

The definition of "consumer products" contained in the HCS presents another problem for the construction industry. The small home improvement contractor frequently uses products that are packaged for the general public. Under HCS, the employer must determine whether the product is being used to a greater extent than normal consumer use. Regrettably, the term "normal consumer use" is totally subjective and grants complete discretion to the OSHA inspector.

Employers and employees utilizing consumer products should be under no further obligation than any other consumer to use the product in a safe manner. If labels are sufficient to protect the general public, it is unnecessary to provide additional information to employees who are already familiar with the product.

NARI® agrees with other construction associations that OSHA should rely on the Congressional definition of consumer products contained in the Superfund Reauthorization Act. This Act excludes from additional regulation products present in

the workplace that are "in the same form and concentration" as a product packaged for use by the general public. The current HCS definition has caused manufacturers of all products that have the slightest possibility of being hazardous to create and disseminate MSDSs to protect against any liabilities. This flood of information is overkill.

The administrative requirements and related costs of this standard are particularly acute for the construction industry. As discussed above, the collection and maintenance of the MSDSs can easily require the addition of at least one part-time employee. Furthermore, the HCS requires that all employees be trained on a regular and continuing basis with respect to the hazardous products, consumer or otherwise, on the worksite.

This becomes very time consuming and costly to the small home improvement contractor who often uses different crews for different jobs utilizing different chemical-containing products. This often entails redundant and repetitive training, much of which is lost to the transient nature of the construction industry.

NARI® is not opposed to having an informed workforce. However, we believe that each employee should be able to carry past training over to each new job. Perhaps the employee can check off those chemicals for which he has had previous training in order to preclude redundancy. This will alleviate the costs

associated with excessive training and allow the employee to build a history of chemical knowledge.

Finally, the problems with education, MSDSs, consumer products and training undergo a multiplier effect when the multi-employer site requirements come into play. The home improvement contractor frequently encounters other contractors at one job site. The HCS requires that employers exchange information with respect to the hazardous chemicals they may each have at the site and to provide additional training on these hazards as well. NARI® agrees with the Office of Management and Budget's finding that this requirement is a paperwork nightmare.

As mentioned above, NARI® has attempted to educate its membership on the requirements of the HCS, but there is no guarantee that the other contractors, with whom they will come into contact, are in compliance and can provide the required information. This creates another liability problem for the contractor.

The multi-employer requirement is too vague for compliance purposes and may result in unwarrented penalties. Perhaps all that is necessary is to inform other contractors as to where the MSDSs are located if, an employee needs them, OR have OSHA maintain a central clearinghouse for MSDS information.

NARI® will continue to inform its members of the requirements

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and potential liabilities of the HCS. Furthermore, NARI® stands ready to work with the Subcommittee and OSHA in finding a more equitable and workable standard to insure worker safety without overburdening the small home improvement contractor.

National Automobile Dealers Association

8400 WESTPARK DRIVE · MCLEAN, VIRGINIA 22102

DOUGLAS I. GREENHAUS
Senior Attorney, Regulatory Affairs

September 27, 1988

Docket Office
Docket H-022D
Occupational Safety and
Health Administration
200 Constitution Avenue, N.W.
Room N3670
Washington, D.C. 20210

Re: Hazard Communication;
29 C.F.R. Parts 1910, 1915,
1917, 1918; and 1926; Docket
H-022D

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) is a national trade association representing over 20,000 franchised new car and truck dealers across the country. NADA members are primarily engaged in the retail sale of new and used motor vehicles, both foreign and domestically produced. NADA members are also engaged in automotive service, repair and parts sales.

Automobile and truck dealerships are generally recognized as part of the so-called "vehicle maintenance" industry sector. As such, dealerships commonly engage in vehicle prep and finish, auto body repair, painting, service repair and maintenance, and rustproofing. Consequently, dealerships purchase, store, utilize, and sell numerous chemical products.

OSHA recently issued a notice seeking public comment on several proposed amendments to its expanded hazard communication standard. 53 Fed. Reg. 29822, et seq. (August 8, 1988). In the preamble to its latest proposal, OSHA states that it is responding in part to public comments submitted during a 60 day period ending October 23, 1987 and to the Office of Management and Budget's (OMB) exercise of authority under the Paperwork Reduction Act. 53 Fed. Reg. 29823-4. NADA recognizes that, as of this date, the U.S. Third Circuit Court of Appeals continues to review a challenge to OMB's authority in this matter. Regardless of the outcome of that proceeding, OSHA has the authority to consider amendments to the hazard communication standard pursuant to Section 6(b) of the Williams-Steiger Occupational Safety and Health Act and regulations promulgated thereunder. 29 U.S.C. §655(b); 29 C.F.R. §1911.

I. NADA'S ORIGINAL OBJECTIONS AND SUGGESTED MODIFICATIONS TO THE EXPANDED HAZARD COMMUNICATION STANDARD

NADA continues to generally support a requirement that employers communicate chemical information to employees who are potentially exposed to chemical hazards. The improved work practices which result from the communication of useful hazard information serves to benefit employers and employees alike.

In an October 20, 1987, petition for modification, NADA focused on the infeasibility or impracticability of several specific provisions of the newly expanded standard. See, Attachment I. NADA urged OSHA to add a de minimus exemption, modify the consumer product exemption, and revise the definitions of "article" and "distributor". NADA also urged OSHA to review its estimates of the employer burdens imposed by the standard, to publish a generic written program as a non-mandatory appendix, and to modify the employer's responsibilities with respect to foreign or visitor workers.

NADA also suggested that OSHA modify certain labelling and material safety data sheet (MSDS) requirements. Lastly, NADA asked OSHA to review its employer burden estimate for the employee training requirements.

The following discussion reviews the extent to which OSHA has addressed NADA's suggestions and reiterates any outstanding concerns.

II. OUTSTANDING NADA CONCERNS AND SUGGESTIONS

A. Scope and Application

1. Articles

In its petition, NADA suggested that OSHA incorporate a de minimus exposure provision into its definition of "article." 29 C.F.R. §§1910.1200(b)(iv) and (c). Since there exists the potential for some measurable chemical release from almost any "article" during normal use, adjustment, or repair by a non-manufacturing employee, it was NADA's position that it is infeasible and unnecessary to account for all such exposures in an employer hazard communication program. In its recent proposal, OSHA responded to these and other related suggestions by modifying the "article" definition to exclude fluids and particles and to exempt releases of very small quantities of hazardous chemicals that do not pose a health risk.

OSHA's modification of the "article" definition appears to also address concerns raised in the concept of de minimus exposures. 53 Fed. Reg. 29832-29833. While this latest modification appears to be a step in the right direction, NADA must continue to suggest that the concept of a de minimus exposure would better serve to achieve the objective of eliminating minute or trace releases from coverage by the standard.

2. Consumer Products

In its petition, NADA contended that it was infeasible for nonmanufacturer employers to determine both "normal consumer use" and a consumer's duration and frequency of exposure. Further, NADA suggested that the consumer product exemption failed to provide employers with a practical guide to exempt consumer products. To address these concerns, NADA suggested that OSHA modify the definition of consumer product consistent with language set out by Congress in the Superfund Amendments and Reauthorization Act (SARA) of 1986. OSHA rejected this suggestion and failed to make any clarifying modifications to the consumer product definition. 53 Fed. Reg. 21837.

NADA urges OSHA to reconsider this matter. OSHA must recognize that this issue involves practical considerations for nonmanufacturing employers attempting to inventory their workplaces to determine which chemical products require the maintenance of MSDS sheets as well as which MSDS sheets may be superfluous. At the very least, OSHA should provide the regulated community with a series of guidance-oriented examples illustrating what it considers to be consumer products.

B. Definitions

1. Commercial Account

OSHA's new definition of "commercial account" appears to address several of NADA's concerns. NADA had asked that OSHA consider a modification of the term "distributor" which would act to exempt businesses who occasionally sell chemical products to employers but who also sell at retail. In addition, NADA suggested that OSHA modify the product labelling requirements to include telephone numbers for employers to use to obtain MSDS sheets for products bought at retail.

By limiting the obligations of retail sellers to "commercial accounts", OSHA has acted to prudently limit the obligations of distributors who sell chemical products to employers, employees, and consumers. NADA continues to suggest, however, that OSHA modify the labelling requirements to include name, address and telephone number information.

C. Written Hazard Communication Program

1. Multi-Employer Workplace

OSHA has apparently ignored NADA's suggestions regarding the occasional "foreign" or "visitor" worker. See, Attachment I at 8. NADA once again urges OSHA to clarify the final rule to indicate that the multi-employer workplace provision is not meant to cover tradesmen who are occasionally present at an employer's workplace for deliveries, facility repairs, etc.

D. Material Safety Data Sheets

OSHA should establish a requirement that material safety data sheets contain EPA community right-to-know hazard category information. As was stated in a recent EPA rule OSHA, not EPA, has the authority to require such useful information. 52 Fed. Reg. 38344, 38353 (October 15, 1987).

E. Employee Information and Training

NADA is pleased to see that OSHA has added a nonmandatory appendix containing compliance guidance for employers.

III. CONCLUSION

Franchised automobile and truck dealers have begun in earnest to comply with the requirements of the newly expanded hazard communication standard. See, Attachment II. OSHA's most recent proposal attempts to ease the compliance burden by taking into account several realities inherent in the nonmanufacturing workplace. By incorporating the suggestions listed above, OSHA will act to further facilitate the effectiveness of the standard.

Respectfully submitted,

NATIONAL AUTOMOBILE DEALERS ASSOCIATION

By: _____

Douglas I. Greennaus
Senior Attorney for Federal
Regulatory Affairs
8400 Westpark Drive
McLean, Virginia 22102
(703) 821-7040

DIG/ljs

ATTACHMENT I

8400 WESTPARK DRIVE • MCLEAN, VIRGINIA 22102

DOUGLAS I. GREENHAUS
Senior Attorney, Regulatory Affairs

October 20, 1987

Honorable John A. Pendergrass
Assistant Secretary for Occupational
Safety and Health
Occupational Safety and Health
Administration (OSHA)
200 Constitution Avenue, N.W.
Room S2315
Washington, D.C. 20210

Re: Petition for Modification of The Hazard Communication Standard; 29 C.F.R. Parts 1910, 1915, 1917, 1918, 1926 and 1928

Dear Assistant Secretary Pendergrass:

The National Automobile Dealers Association (NADA) is a national trade association representing over 19,000 franchised new car and truck dealers across the country. NADA members are primarily engaged in the retail sale of new and used motor vehicles, both foreign and domestically produced. NADA members are also engaged in automotive service, repair and parts sales.

On behalf of the nation's automobile dealers and their employees, NADA hereby formally petitions you to modify the Hazard Communication Standard based on the objections and consistent with the suggestions contained herein.

I. JURISDICTION

Section 6(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (the Act) allows a procedure for the modification of occupational safety or health standards. 29 U.S.C. §655(b). In pertinent part, Section (b) provides that:

> (b) "The Secretary may by rule promulgate, modify or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person . . ., determines that a rule shall be promulgated in order to serve the objectives of this chapter.

(2) The Secretary shall publish a proposed rule . . ., modifying . . . an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty dates after publication to submit written data or comments . . .

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule stating the grounds therefor and requesting a public hearing on such objectives. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objectives have been filed and a hearing requested, specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule modifying . . . an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of 90 days) as the Secretary may determine necessary . . .

29 U.S.C. §655(b); emphasis added.

In addition to the OSHA Act itself, the Administrative Procedure Act provides that:

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

5 U.S.C. §553(e); emphasis added.

Further, OSHA's Rules of Procedures for Promulgating, Modifying, or Revoking Occupational Safety or Health Standards outline specific procedures regarding petitions for the modification of health or safety standards. 29 C.F.R. Part 1911.

On August 24, 1987, OSHA published a final rule expanding coverage of the hazard communication standard to all employers in non-manufacturing industries. 52 Fed. Reg. 31852, et seq. (August 24, 1987). Automobile and truck dealerships are generally recognized as being part of the so-called "vehicle maintenance" industry sector and are categorized under SIC Code 55. Dealerships typically engage in prep and finish, autobody, painting, repair and maintenance, and rust proofing operations. As a consequence, dealerships purchase, store, utilize, and sell numerous chemical products. Therefor, dealerships are covered by the new Standard and NADA, as a trade association representing franchised dealers, is an "interested person" entitled to petition OSHA for modification of the Standard. 29 C.F.R. §1911.3.

II. PERTINENT HISTORY OF THE EXISTING STANDARD

NADA recognizes OSHA's long standing authority to issue a rule governing chemical hazard information. 29 U.S.C. §655(b)(7). Following several years of preliminary study and review, OSHA exercized that authority by issuing a notice of proposed rulemaking for a "Hazards Identification" rule. 46 Fed. Reg. 4412, et seq. (January 16, 1981). At that time OSHA indicated that, based on the then current record, it intended to issue a standard for employees of manufacturing industries only. 46 Fed. Reg. 4412, 4426.

The 1981 proposal was subsequently withdrawn for further consideration and a new NPRM was issued roughly one year later. 47 Fed. Reg. 12092, et seq. (March 19, 1982). In its 1982 proposal, OSHA again explained how it chose to limit the Standard's application to SIC Codes 20-39 based a recognition of the relative risk of exposure to chemical hazards. OSHA indicated that if necessary, "the proposal could be extended or modified for [non-manufacturing industries] . . . at a later date." 47 Fed. Reg. 12092, 12102 (March 19, 1982).

In the final rule, OSHA reiterated its previously stated finding that the Standard's scope should be limited to manufacturers, but that the Agency might consider expanding coverage to non-manufacturers in the future. 48 Fed. Reg. 53280, 53282-7 (November 23, 1983). The Standard was challenged in the Third Circuit Court of Appeals where several issues were raised including the scope of coverage. Initially the issue was remanded to the Agency, where a review of the feasibility of an expanded Standard

was underway. United Steelworkers of America, AFL-CIO-CLC v. Pendergrass, 763 F.2d 728 (3rd Cir. 1985). A subsequent order by the Court required OSHA to issue "a hazard communication standard applicable to all workers covered by the OSH Act, . . . or a statement of reasons why, on the basis of the present administrative record, a hazard communication standard is not feasible." United Steelworkers of America; AFL-CIO-CLC v. Pendergrass, 819 F.2d 1263; 1270 (3rd Cir. 1987).

Recently, OSHA fully satisfied the Court's directive by publishing a revised Standard of expanded scope. 52 Fed. Reg. 31852, et seq. (August 24, 1987). The preamble to the Standard, signed by the Assistant Secretary on August 18, 1987, stated that:

> OSHA continues to believe that it should have been permitted to follow the rulemaking procedures in the Act by issuing a notice of proposed rulemaking and developing a public record prior to promulgating a final rule . . . OSHA recognizes that information submitted during a normal rulemaking might have resulted in further changes to the provisions to better address feasibility or practicality concerns.
>
> 52 Fed. Reg. 31854.

The preamble goes on to suggest that persons with concerns regarding issues of feasibility or practicality provide information or recommendations to the Agency within sixty days (by October 23, 1987). 52 Fed. Reg. 31854. Consistent with that suggestion, NADA intends to submit a copy of this petition to the final rule docket. The following suggested modifications should therefor be considered by OSHA both as objections for purposes of this Petition for Modification and as comments for purposes of the docket to the final Standard. 29 C.F.R. §1911.11.

III. OBJECTIONS AND SUGGESTED MODIFICATIONS TO THE HAZARD COMMUNICATION STANDARD, AS EXPANDED

NADA is generally supportive of a Federal requirement to communicate chemical information to employees who are potentially exposed to chemical hazards. The communication of useful information resulting in better work practices can only serve to benefit employees and employers alike. Therefor, while NADA recognizes that there may exist some non-manufacturing industries for whom compliance with the Standard as a whole may be infeasible, our concerns focus on the infeasibility or impracticability of specific provisions of the Standard.

A. Purpose of the Standard

NADA generally supports the stated purpose of the Standard, especially the language on pre-emptive effect. The Standard ought to mollify the regulatory impact of individual State right-to-know laws as well as ease the compliance burden of dealers who operate in more than one state.

B. Scope and Application

NADA urges OSHA to modify Section (b)(2) of the Standard to incorporate a de minimus exemption from coverage. 29 C.F.R. §1910.1200(b)(2). The previous Standard utilized language regarding workplace situations which routinely involve potential exposure. The notion of a routine potential for exposure helped to define which chemicals and employees triggered the operative provisions of the Standard. New Section (b)(2), by referring to "may be exposed under normal condition of use or in a foreseeable emergency" fails to adequately direct where to draw the line on which chemicals and employees should be covered by an employer's hazard communication program.

NADA suggests that OSHA modify Section (b)(2) to read:

> This section applies to any chemical which is known to be present in the workplace in such a manner that employees may be regularly exposed under normal condition of use or in a forseeable emergency, but does not apply to casual, irregular, de minimus, or reasonably unforseeable exposures.

A modification of this sort would provide certainty to the Standard's scope and afford employers the ability to design appropriate hazard communication programs.

NADA also urges OSHA to modify Section (b)(vii) dealing with the "consumer product" exemption. The existing language conditions the exemption for a consumer product to ". . . where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results is a duration and frequency of exposure which is not greater than exposures experienced by consumers . . ." 29 C.F.R. §1910.1200(b)(vii). Determining either "normal use" or "a consumer's duration and frequency of exposure" is an infeasible prospect for non-manufacturers. In addition, the exemption fails to provide the employer with a practical guide to exempt consumer products.

NADA offers the following language as a substitute:

> (b)(vii) Any chemical used in the workplace in substantially the same manner as normal consumer use, or purchased, used, or sold in substantially the same form and concentration as a product packaged for distribution and/or use by the general public.

Employers should be responsible for providing information on "industrial or commercial strength" chemical hazards and not the common sense, everyday potential exposures which employees might themselves be exposed to at home on the weekend. Likewise, dealership parts departments and other chemical resellers should not be required to provide chemical hazard information on a product purchased at the counter by an employer purchaser when the next purchaser in line for that product is a consumer.

The feasibility of the Standard is in large part a function of the practicality of compliance which in turn depends upon a reasonable definition of significant potential workplace exposures for which chemical information should be provided. The tasks of designing a communication program, implementing worker training, and maintaining and providing Material Safety Data Sheets (MSDS's) will certainly prove infeasible if the Standard can be interpreted as covering chemicals or exposures which are insignificant.

C. Definitions

The definition of "article" should be modified to afford some substance to the article exemption. 29 C.F.R. §§1910.1200(b)(iv) and (c). Of specific concern is the third clause which effectively limits the exemption to articles which do not release or otherwise result in exposure to hazardous chemicals under normal conditions of use. Even if OSHA were to adopt the de minimus modification to Section (b)(2) suggested above, clarification should be made that articles posing the potential for de minimus exposure are exempt.

Some articles may release small amounts of chemicals while undergoing repair. Any number of automobile parts, for example, may fall into this category. Therefor, NADA suggests that OSHA modify the "article" definition in Section (c) to read:

(iii) which does not release or otherwise result in more than a de minimus exposure to a chemical, under normal conditions of use.

Arguably, there exists a potential for measurable chemical releases from almost all "articles" under some condition of normal use, adjustment, or repair by a non-manufacturing employee. It would be infeasible and unnecessary to account for all such exposures in an employer hazard communication program.

Under the existing definition, the term "distributor" means "a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers." 29 C.F.R. §1910.1200(c). NADA urges OSHA to modify this definition by adding ". . . but not to consumers." This new language will effectively exempt businesses who may sell to employers, but who sell at retail. It is impractical if not infeasible for grocery stores, hardware stores, and dealership parts departments to meet the responsibilities of "distributors."

D. Written Hazard Communication Program

Under the Standard, dealers are required to develop and implement their own hazard communication programs. 29 C.F.R. §1910.1200(e). While NADA recognizes this requirement to be crucial to the effective communication of chemical hazards, it is also viewed as potentially burdensome.

Section (e)(1)(i) of the Standard requires that a list be compiled of all hazardous chemicals in the workplace. 29 C.F.R. §1910.1200(e)(1)(i). In car or truck dealerships, several departments using hazardous chemicals including service, body and parts, will be responsible for conducting surveys for this list of chemicals. Having reviewed dealership programs established to meet state requirements and conducted surveys of its individual members, NADA concludes that on the average, dealerships with service and body facilities will typically list 100-300 chemical products.

Under Section (e)(1)(ii), employers are required to prepare a hazard communication program. Whether starting with a "fill-in-the-blank" version or from scratch, dealerships attempting to comply with state right-to-know laws spend from 4 to 15 hours of combined professional/clerical time on program development, far in excess of the 2 hours professional and .5 hours clerical suggested in the OSHA background document. Jaco, Economic Analysis of the Expansion of Scope of the Hazard Communication Standard, p. A-12, June 26, 1987. In light of this considerable burden, NADA urges

OSHA to publish a non-mandatory appendix to the Standard containing a hazard communication program which, if adopted and used, would enable a small, non-manufacturing business to meet the Section (e)(1) requirements.

A non-mandatory appendix could be readily modeled after the existing program for federal workers. Industry-specific supplements developed by OSHA and distributed through trade associations and through the OSHA Consultation network would allow small business non-manufacturers to tailor such a program to their workplaces at a reasonable cost. Of course, dealers and other businesses would always be free to elect to establish their own programs, to purchase programs from commercial contractors, or to adopt the state right-to-know programs, if any, they now have in place.

Many NADA members have found the assistance of OSHA Consultation services essential to the establishment of effective worker health and safety programs. NADA urges OSHA to reference the availability of this resource in the written hazard communication Standard. The general lack of technical expertise and resources among non-manufacturers must be recognized through the incorporation of a generic program into the Standard and the promotion of OSHA Consultation services. Modification of the Standard to this end can only serve to decrease compliance costs and increase compliance rates.

It is both infeasible and unnecessary for employers to involve themselves with hazard communication responsibilities regarding employees of other employers who occasionally enter the workplace. OSHA must exclude the occasional "foreign" or "visitor" worker provision from this requirement. 29 C.F.R. §1910.1200(e)(2). While non-employees present in the workplace for an extended period of time should be covered by a multi-employer workplace provision, occasional tradesmen who come on-site to deliver parts, repair a lift, or install lighting systems, should not.

E. Labels and Other Forms of Warning

NADA strongly urges OSHA to modify Section (f)(1)(iii) to include an appropriate phone number for interested persons to use in order to obtain MSDS's sheet or other information concerning the labelled chemical product. 29 C.F.R. §1910.1200(f)(1)(iii). As stated earlier, providing MSDS's to employer purchasers buying products in retail settings is both infeasible and impractical for non-manufacturing employers selling in settings open to general public consumers. Employer purchasers should instead look to

chemical manufacturers, importers or distributors for MSDS's. A telephone number on the label would facilitate this method of hazard communication.

Section (f)(5) should be modified to clarify that an employer's liability to maintain labels only extends to those chemicals known by the employer to contain hazardous chemicals. As presently written, the section does not account for unlabelled containers for which the employer has no knowledge of a hazard determination. 29 C.F.R. §1910.1200(f)(5). It is both infeasible and impractical for downstream employers to second guess upstream manufacturers, distributors, and importers whose duty it is to make hazard determinations, label containers, and provide MSDS's.

F. Material Safety Data Sheets

OSHA should modify the material safety data sheet requirement to accurately reflect the responsibility of "employers." Section (g)(1) should be modified to read:

> Employers shall maintain a copy of each material safety data sheet they receive for each labelled hazardous chemical in the workplace.
>
> 29 C.F.R. §1910.1200(g)(1); emphasis added.

This modification simply clarifies that an employer is under no obligation to maintain MSDS's for chemicals which aren't known to be hazardous.

As was referred to earlier, the requirement that retail sellers supply MSDS's to employer purchasers is both infeasible and impractical. Literal compliance would require every little grocery, hardware, and parts store to maintain a pile of MSDS's or a photocopier. Thus, Section (g)(7) should be modified by substituting for the second sentence the following:

> Employers purchasing hazardous chemicals from retail distributors are required to obtain MSDS's from the manufacturer or other supplier of such chemicals by referring to the name, address and phone number identified on the container label.
>
> 29 C.F.R. §1910.1200(g)(7).

NADA suggests that an additional provision be added to Section (g) requiring creators of MSDS's to indicate within which of EPA's five hazard categories the product falls. EPA states in its recently published rule on Community Right-to-Know that OSHA and not EPA has the authority to require such information. See, Fed. Reg. 38344, 38353, (October 15, 1987). It would be infeasible for most non-manufacturing employers to have to do their own categorization while the imposition on manufacturers, importers and distributors would be minor.

OSHA has seriously underestimated the cost of maintaining and providing MSDS's. The Agency's economic analysis inappropriately borrows the average chemical hazard figure calculated for its written program and information and training equations for use in its MSDS-related equations. Jaco, Economic Analysis, at Appendix A. Where 17-20 chemical hazards may approximate a proper average for the former, the actual number of MSDS's must be used for the latter. A figure of 200 MSDS's should be used as representative of an average dealership.

G. Employee Information and Training

OSHA should publish a non-mandatory appendix on employee information and training. The above discussion on the need for a generic hazard communication program and the use of the Federal program as a model, is equally applicable with respect to a generic program for employee information and training.

Training programs, whether "pre-packaged" or self-designed, impose a greater burden than suggested by OSHA's analysis. It takes no less than 4 hours to develop and 4 hours to present a dealership training program. Supply costs average $25 per employee. An average dealership, 35 employees in size (at least 18 of whom must be trained) with an average annual turnover rate of 30%, will incur an annual training cost of $1500-$3000, not $566.66 as suggested by OSHA's analysis for a similar sized facility in SIC Code 55. See Jaco, Economic Analysis, at 4-27.

V. SUGGESTED PROCEDURE FOR MODIFICATION OF THE HAZARD COMMUNICATION STANDARD

As was stated above, OSHA's authority to modify the Standard stems from Section 6(b) of the Act. 29 U.S.C. §655(b). The Agency's rules of procedure outline an appropriate timetable once a petition to modify a standard is accepted. 29 C.F.R. §§1911.3 and 1911.11. However, the Assistant Secretary is afforded considerable discretion both to modify the regulatory timetable and to make minor modifications without an opportunity for full notice and comment. 29 C.F.R. §1911.4 and 1911.5.

NADA urges the Assistant Secretary to review this petition as expeditiously as possible. Ideally, OSHA should review this petition together with all other petitions and comments submitted and, within thirty days after receipt, issue a notice outlining its intent to modify the Standard. 29 C.F.R. §§1911.4(a) and 1911.11(b).

The Agency's notice should in part:

1) List all minor modifications which the Agency intends to implement without further procedure, consistent with 29 C.F.R. §1911.5;

2) List all significant modifications in the form of a proposed modified standard, consistent with 29 C.F.R. §1911.11(b)(1);

3) List all suggested modifications which the Agency rejects along with an explanation for any such denials, consistent with 5 U.S.C. §555(e);

4) Provide no more than thirty days for comment on those significant modifications referred to in (2) above, consistent with 29 C.F.R. §1911.11(b)(3); and

5) Provide for a public hearing on the significant modifications referred to in (2) above no earlier than ten days following the date set in (4) above, consistent with 29 C.F.R. §§1911.11(b)(4) and 1911.11(d).

Following notice and comment on the proposed modifications, OSHA should issue a final modified standard consistent with 29 C.F.R. §1911.18.

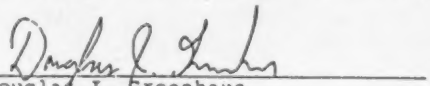
Under the above schedule, OSHA could issue a modified rule within 130 days or roughly by the first of March, 1988. NADA suggests that, to the greatest extent possible, the Standard's May 23, 1988, effective date remain in place. Final modifications should, where possible, become effective on that date.

VI. CONCLUSION

NADA requests that the Assistant Secretary grant this petition in full.

Respectfully submitted,

NATIONAL AUTOMOBILE DEALERS ASSOCIATION

By: 

Douglas I. Greenhaus
Senior Attorney for Federal
Regulatory Affairs
8400 Westpark Drive
McLean, Virginia 22102
(703) 821-7040

DIG/ljs

NATIONAL UTILITY CONTRACTORS ASSOCIATION
1235 JEFFERSON DAVIS HIGHWAY, SUITE 808
ARLINGTON, VIRGINIA 22202-3283
(703) 486-2100 FAX: (703) 979-8628

Statement of the

National Utility Contractors Association

Rick Egge
President

Before the

House Small Business
Subcommittee on Exports, Tourism and Special Problems

on the

Hazard Communication Standard

September 28, 1988
Washington, D.C.

The National Utility Contractors Association (NUCA) appreciates the opportunity to present this statement before the House Small Business Subcommittee on Exports, Tourism and Special Problems on the impact of the Hazard Communication Standard (HAZCOM) on the underground utility construction industry.

NUCA is comprised of some 1,700 companies nationwide, including approximately 900 construction contractors. Although many NUCA members are involved in several aspects of the construction industry, we specialize in the construction of sewage treatment, water supply and other underground utility facilities. We are particularly involved in the construction of underground pipeline systems nationwide, many of which are financed by federal agencies, including the Environmental Protection Agency, U.S Army Corps of Engineers, Farmers Home Administration, Bureau of Reclamation, Department of Housing and Urban Development and others.

With forty-five chapters located in thirty-four states, NUCA is the recognized voice of the nation's underground utility construction industry. The size of the companies comprising the association ranges from an annual volume of less than $1 million to more that $150 million. The vast majority of the nation's underground utility construction companies are classified as small businesses by the Small Business Administration because they average less than $17 million per year in revenues. Those firms include both "open shop" operations and unionized businesses.

Our association is committed to the safety and health of our employee workforce. HAZCOM heavily emphazises the health area concerning the employee's right-to-know about dangerous chemical products in the workplace under regulations promulgated by the Occupational Safety and Health Administration (OSHA). The compliance burden for HAZCOM falls entirely upon the shoulders of the employer through its initial program development, and ongoing training and labeling requirements.

HAZCOM may require a high priority in some sectors of the manufacturing and non-manufacturing economy where chemical hazards pose a high risk to those workers. However, the relatively few construction injuries and fatalities in our field are more the result of safety-related problems involving the physical dangers of our work including trenching and the safe operation of heavy equipment. To comply with HAZCOM, the utility construction industry would divert resources from the major problem area; i.e., safety, not health hazards.

Why? Exposure to hazardous chemical products is a more serious concern in enclosed work areas. Almost all underground utility construction occurs outdoors where usuage of products containing toxic chemicals carries far less risk than in a closed environment. On the other hand, the primary cause of injuries and fatalities in utility construction is a trench collapse. (NUCA strongly supports OSHA's current effort to improve worker safety by conducting a major overhaul of federal trench and excavation standards that are based on more realistic performance goals).

Serious injuries are usually the result of human error, improper operation of construction equipment, failure to follow safety procedures and drug and alcohol abuse. In our industry, hazardous chemical products are placed at the bottom of the list of employee safety and health concerns, according to a NUCA industry survey.

HAZCOM was originally designed by OSHA with the manufacturing sector in mind. OSHA did not broaden its regulatory requirements to include the non-manufacturing sector until the agency was ordered by a federal court. After planning to expand enforcement activities to all industries on May 23, 1988, an appealate court granted a temporary stay to the construction industry only.

The utility construction industry is seasonal in some areas of the country and highly mobile -- the worksites change constantly. The workforce is usually transient and temporary in nature. They must possess strong technical and mechanical abilities. At the workplace, the number of subcontractors hired by general contractors (multi-employer worksites) for short and long durations can change daily. This exciting and vibrant environment contrasts greatly from the repetitious manufacturing process. The current OSHA HAZCOM standards are cumbersome and difficult paperwork and training requirements to administer in this unique setting.

First, the regulations require the maintenance of a file of Material Safety Data Sheets (MSDSs) for each hazardous chemical product at the worksite. All manufacturers of hazardous chemical products are not automatically making MSDSs available to contractors. Some MSDSs do not trickle down to the wholesale and retail levels.

On multiemployer worksites, responsibility for each contractor's MSDSs has not been clarified, but employees are guaranteed access to them. Moreover, some subcontractors are on the jobsite for only a few hours.

According to a NUCA industry survey, OSHA has grossly underestimated the average number of MSDS's at a construction site at nine hazardous chemical products. Our data indicate that the average is around fifty MSDSs. Even our estimate may be too low. In some cases, several hundred MSDSs are maintained by a contractor. Chasing down MSDSs from suppliers is a paperwork nightmare that is a heavy administrative burden.

The size of the worksite poses special problems. On large worksites, employee access to a central HAZCOM file is difficult due to long distances. In downtown areas, cramped work conditions put available space at a premiun.

Unless the above confusion is rectified, file cabinets may have to replace tool boxes on the foreman's pickup truck under HAZCOM!

Second, all hazardous chemical products must be properly labeled. The construction supply industry has been slow to comply with this requirement, so much of this burden hits the utility construction contractor. Valuable worker productivity is lost on pasting and marking appropriate warnings on unlabeled hazardous chemical products instead of digging with a shovel or swinging a hammer. Monitoring hazardous chemical products is complicated by the daily delivery of new materials to the worksite. Construction is a very material intensive industry so that implementing a quality control program to comply with labeling requirements is especially onerous.

Third, all employers are required to have a written HAZCOM program. This is an individualized company policy statement that includes a list of the most commonly used hazardous chemical products. Yet, the composition of a product may change over time. The program also lists the steps taken to compile a file of MSDSs. The training program for employees on handling those products in the proper manner must be described.

Lastly, the employer is required to train employees to recognize potentially dangerous products, acquaint them with the degree of hazard and instruct them on how to avoid excessive danger. Because of the rapid turnover and temporary duration of the construction workforce, this requirement will be burdensome. Training programs are expensive and time-consuming. On multi-employer worksites, utility contractors are not necessarily aware of the special training needs of other contractors for their hazardous chemical products.

In summary, HAZCOM will require an investment of significant resources on the part of most small businesses in the utility construction industry. HAZCOM will make it more difficult for small contractors to survive during the lean times and deter the market entry of new firms. Major changes will be required in customary business practices that will add unnecessary delays to construction project timetables and add higher costs to projects.

NUCA stongly urges OSHA to work with the construction industry to develop a HAZCOM standard that recognizes the unique characteristics of the industry and one that provides contractors with a practical means of protecting workers' health. In addition, it is imperative that OSHA commit the resources necessary to educate and train construction contractors of their responsibilities under HAZCOM.

We respectfully urge the committee to join in supporting our efforts to encourage a "common sense" approach to this burdensome problem for America's small business community.

* * *

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

The Honorable Norman Sisisky
Chairman
Subcommittee on Exports, Tourism,
and Special Problems
Committee on Small Business
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of October 21, forwarding the transcript of the testimony of the Occupational Safety and Health Administration (OSHA) at the Subcommittee hearing on September 28, 1988, on the small-business impact of OSHA's Hazard Communication Standard.

Enclosed is the corrected transcript along with information for the record requested by the Subcommittee on the inspection experience of States which expanded their hazard communication requirements to non-manufacturing industries prior to Federal OSHA (Transcript, page 122), the level of compliance with HCS by small and large employers, and those provisions of the standard which are most frequently violated (Transcript, page 125). Also enclosed are membership rosters of the National Advisory Committee on Occupational Safety and Health and the Advisory Committee on Construction Safety and Health at the time the expansion of the HCS was discussed (Transcript, page 130).

Thank you for the opportunity to review the transcript. If you have any questions regarding this response, please let me know.

Sincerely,

Frank A. White
Deputy Assistant Secretary

Enclosures

Materials for the Record
Subcommittee on Exports, Tourism, and Special Problems
Committee on Small Business
Hearing on Hazard Communication Standard, September 28, 1988

Insert: Transcript, page 122, following line 2849

The attached table provides information on the hazard-communication compliance experience of three selected States (Minnesota, Tennessee and Maryland) which expanded the scope of their hazard communication requirements prior to Federal OSHA.

To be inserted in the record of the transcript of the hearing on September, 28, 1988, on Page 122, line 2849

OFFICE OF STATE PROGRAMS
SEPTEMBER, 1988

Selected State Hazard Communication Standard (HCS) Statistics

States which Expanded Scope Prior to OSHA

MINNESOTA - January, 1984 through July 29, 1988

	Construction	Manufacturing	Non-Manufacturing (Except Construct.)	Total
1. # of Inspections	8,468	4,785	10,177	23,430
2. # of Inspections with HazCom Citations	154	735	1,434	2,323
3. % of Inspections with HazCom Citations	1.8%	15.4%	14.1%	9.9%
4. % of Inspections in Compliance*		84.6%	85.9%	90.1%

Note: In-compliance rate for construction cannot be calculated, as HazCom compliance was not routinely checked in all inspections.

TENNESSEE - October 1, 1987 through June 30, 1988

1. # of Inspections	811	955
2. # of Inspections with HazCom Citations	275	307
3. % of Inspections with HazCom Citations	33.9%	32.15%
4. % of Inspections in Compliance*	66.1%	67.85%

Note: Data may include citations for violations of Community Right-to-Know provisions.

MARYLAND - April 1, 1987 through March 31, 1988

1. # of Inspections	827	282	248	1,357
2. # of Inspections with HazCom Citations	199	76	54	329
3. % of Inspections with HazCom Citations	24%	26.9%	21.7%	24.2%
4. % of Inspections in Compliance*	76%	73.1%	78.3%	75.8%

* In-compliance rate assumes that HazCom compliance was checked in every inspection.

Materials for the Record
Subcommittee on Exports, Tourism, and Special Problems
Committee on Small Business
Hearing on Hazard Communication Standard, September 28, 1988

Insert: Transcript, page 125, line 2923

The following table provides information on Federal and State enforcement of hazard communication in the manufacturing sector, by size of employer. The table covers the period of May 25, 1986 (the effective date of the Federal standard in the manufacturing sector) through August 31, 1988.

FEDERAL AND STATE ENFORCEMENT OF
HAZARD COMMUNICATION IN MANUFACTURING
May 25, 1986 - August 31, 1988

Federal Enforcement of OSHA's Hazard Communication Standard

	(Establishment Size)				
	1-50	51-100	101-250	1-250	Total
Total Inspections	20,168	6,364	6,197	32,729	38,704
Inspections w/HCS Violations	9,423	2,605	2,176	14,204	15,631
Serious, Willful, Repeat Violations	2,552	933	747	4,232	4,780
% of Inspections in compliance	53.3%	59.1%	64.9%	56.6%	59.6%

18(b) State Enforcement of Hazard Communication Standard

	(Establishment Size)				
	1-50	51-100	101-250	1-250	Total
Total Inspections	14,361	3,433	3,455	21,249	24,273
Inspections w/HCS Violations	4,550	925	773	6,248	6,715
Serious, Willful, Repeat Violations	696	138	88	922	1,005
% of Inspections in compliance	68.3%	73.1%	77.6%	70.6%	72.3%

Materials for the Record
Subcommittee on Exports, Tourism, and Special Problems
Committee on Small Business
Hearing on Hazard Communication Standard, September 28, 1988

Insert: Transcript, page 125, line 2923

The following table provides information on Federal and State enforcement of hazard communication in the non-manufacturing sector, by size of employer. The table covers the period of August 1, 1988 (the effective date of the Federal standard in the non-manufacturing sector, except construction) through August 31, 1988.

FEDERAL AND STATE ENFORCEMENT OF
HAZARD COMMUNICATION
IN NON-MANUFACTURING (EXCEPT CONSTRUCTION)
August 1, 1988 - August 31, 1988

Federal Enforcement of the Hazard Communication Standard

	(Establishment Size)				
	1-50	51-100	101-250	1-250	Total
Total Inspections	782	130	78	990	1162
Inspections w/HCS Violations	111	23	4	138	154
Serious, Willful, Repeat HCS Violations	58	15	8	240	265
% of Inspections in compliance	85.8%	82.3%	94.9%	86.1%	86.7%

18(b) State Enforcement of the Hazard Communication Standard

	(Establishment Size)				
	1-50	51-100	101-250	1-250	Total
Total Inspections	733	116	81	930	1005
Inspections w/HCS Violations	56	6	7	69	76
Serious, Willful Repeat HCS Violations	10	0	0	10	10
% of Inspections in compliance	92.4%	94.8%	91.4%	92.6%	92.4%

Materials for the Record
Subcommittee on Exports, Tourism, and Special Problems
Committee on Small Business
Hearing on Hazard Communication Standard, September 28, 1988

Insert: Transcript, page 125, line 2923

The following table provides information on those provisions of the Hazard Communication Standard most frequently cited by Federal OSHA in the non-manufacturing sector from August 1, 1988 (the effective date of the Federal standard in non-manufacturing) through November 4, 1988.

MOST FREQUENTLY VIOLATED PROVISIONS
OF THE FEDERAL HAZARD COMMUNICATION STANDARD
IN NON-MANUFACTURING
August 1, 1988 - November 4, 1988

Standard	Description	Number of Citations
1910.1200(e)(1)	Lack of written program	419
1910.1200(h)	Employee information and training	295
1910.1200(g)(1)	Material Safety Data Sheets	218

The citations for the above three provisions represent more than three-fourths of all citations issued for violations of OSHA'S Hazard Communication Standard in the non-manufacturing sector during this time period.

Materials for the Record
Subcommittee on Exports, Tourism, and Special Problems
Committee on Small Business
Hearing on Hazard Communication Standard, September 28, 1988

Insert: Transcript, page 130, line 3039

Attached are membership rosters for the National Advisory Committee on Occupational Safety and Health and the Advisory Committee on Construction Safety and Health at the time the expansion of OSHA's Hazard Communication Standard was discussed.

U. S. Department of Labor

"To be inserted in the record of the transcript of the hearing on September 28, 1988, on Page 130, line 3039"

ROSTER
THE NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH
CHAIRPERSON - JOYCE C. HEARN

PUBLIC

Dr. Ernest M. Dixon (11-88) (HHS)
6305 Evermay Drive
McLean, Virginia 22101
(703) 556-0296

Joyce C. Hearn (11-89)
Representative
South Carolina Legislature
1300 Berkeley Road
Columbia, South Carolina 29205
(803) 256-7255
(803) 734-3013

Robert B. Taylor (11-88)
Director, Division of Occupational Safety and Health
Tennessee Department of Labor
Nashville, Tennessee 37219
(615) 741-2793

Robert Spear (11-88) (HHS)
University of California
School of Public Health
320 Warren Hall
Berkeley, California 94720
(415) 642-1681 (415) 642-0761

NIOSH Contact:

Karen Deasy
(202) 472-7134

OSHA Contact:

Tom Hall (202) 523-8615
Dallas R. Sweezy (202) 523-6027

MANAGEMENT

Joseph L. Holtshouser (11-88)
153 W. Garwood Drive
Tallmadge, Ohio 44278-1945
(216) 796-4531
(216) 633-1844

Thomas F. Evans (11-89)
Director, Environmental Safety & Health
Monsanto Company
12959 Woodlark Lane
St. Louis, Missouri 63131
(314) 694-8888

LABOR

John J. Donlon (11-88)
Special Representative
Colorado Building & Construction Trades Council
1313 Tremont Place, Suite 250
Denver, Colorado 80204
(303) 820-2282 (303) 596-5116

Margaret M. Seminario (11-89)
Asscociate Director, Department of Occupational Safety, Health and Social Security
American Federation of Labor and Congress of Industrial Organizations
815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5366

SAFETY

B. Gawain Bonner (11-89)
Route 3, Box 458
Huntsville, Texas 77340
(409) 594-3804

Jon Keith Parish (11-88)
Director of Loss Control and Training
Lane Company, Inc.
P.O. Box 151
Altavista, Virginia 24517
(804) 369-5641

HEALTH

Dr. Marcus M. Key (11-89) (HHS)
Professor of Occupational Medicine
School of Public Health
The University of Texas
Health Science Center Room W-424
P.O. Box 20186
Houston, Texas 77225
(713) 792-7450

Gerri G. Kilburn (11-89) (HHS)
Program Director
American Lung Association of Los Angeles County
5858 Wilshire Boulevard - Suite 300
P.O. Box 36926
Los Angeles, California 90036
(213) 935-5864

U.S. DEPARTMENT OF LABOR

"To be inserted in the record of the transcript of the hearing on September 28, 1988, on Page 130, line 3039"

ROSTER
ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
U.S. Department of Labor
CHAIRMAN - Major General Wesley E. Peel (Ret)

EMPLOYEE

Joe A. Adam, Director
Department of Safety & Health
United Association of Journeymen
and Apprentices of the Plumbing
and Pipe Fitting Industry
901 Massachusetts Avenue, N.W.
Washington, D.C. 20001
(202) 628-5823

Robert E.P. Cooney
3570 West 146th Street
Cleveland, Ohio 44111
(216) 671-7694

Jim L. Lapping
Director of Safety
Building & Construction Trades
Department, AFL-CIO
815 16th Street, N.W.
Washington. D.C. 20006
(202) 347-1461

Joseph L. Durst, Jr. Director
Occupational Safety & Health
United Brotherhood of Carpenters
and Joiners of America
101 Constitution Ave., N.W.
Washington, D.C. 20001
(202) 546-6202

George E. Smith, Director
Safety Department
International Brotherhood
of Electrical Workers
1125 15th Street, N.W.
Washington, D.C. 20005
(202-833-7000

EMPLOYER

V. Sherwood Kelly
1222 Merit Drive
Suite 1660
Dallas, Texas 75251
(214) 702-9004

James Pakenham
Safety Manager
Ebasco
210 Clay Avenue
Lynhurst, New Jersey 07071
(201) 460-5919

Thomas J. Reynolds
711 South Jackson Blv.
Chesterton, Indiana 46304
H-(219) 926-3074
W-(219)932-5036

John A. Ward, Jr.
Watco Corporation
P.O. Box 26716
Raleigh, North Carolina 27611
(919) 772-7191

Larry L. Swanda
Vice President
Jensen Construction Co.
5550 N.E. 22nd Street
Des Moines, Iowa 50313
(307) 266-5173

STATE

Edgar L. McGowan
5067 Hillside Road
Columbia, South Carolina 29206
(803) 734-9594
(803) 787-2677

Allen Meier
Commissioner of Labor
State of Iowa
1000 E. Grand
Des Moines, Iowa 50319
(515) 281-3606

FEDERAL

VACANT

PUBLIC

Major General Wesley E. Peel (Ret.)
2807 Barwick Circle
Bryan, Texas 77802
(409) 845-5028

Leonard E. Dodson
12899 Camino Romillette
San Diego, California 92128
(619) 485-7749

Committee Management Contact:

Tom Hall
(202) 523-8615

Theresa Berry
(202) 523-8615

Dallas R. Sweezy (Rob)
(202) 523-6027

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

DEC 23 1988

The Honorable Norman Sisisky
Chairman
Subcommittee on Exports, Tourism,
and Special Problems
Committee on Small Business
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your and Congressman Andy Ireland's letter of October 20, forwarding a series of questions that you were unable to cover at the Subcommittee's September 28 hearing on the efforts of the Occupational Safety and Health Administration (OSHA) to assist small businesses in complying with the Hazard Communication Standard. My answers to the Subcommittee's questions are enclosed. Please accept my apology for the delay in this response.

Thank you for the opportunity to discuss OSHA's Hazard Communication Standard. If I can be of further assistance, please let me know.

Sincerely

Frank A. White (gw)

Frank A. White
Deputy Assistant Secretary

Enclosure

Responses of the Occupational Safety and Health Administration
To Questions of the
Subcommittee on Exports, Tourism, and Special Problems
House Committee on Small Business

Question 1. What programs, if any, has OSHA initiated as an effort to inform all small businesses about the Hazard Communication Standard?

a) Has OSHA planned any further special programs to inform small businesses?

b) If your answer is yes, please give us details about the programs, and if your answer is no, please state why you have not initiated any such programs.

Small businesses employ the vast majority of employees, therefore, OSHA can not really protect employees if it has not made a special effort to inform all small businesses about this Standard.

Response

The primary way in which OSHA notifies the public about its standards is through publication of their requirements in the Federal Register. The Federal Register publication also includes detailed background information and explanatory information about the rule. When the Hazard Communication Standard (HCS) was issued, the agency attempted to reach as many newly covered employers as possible. Although OSHA did not single out small businesses for special attention, OSHA's efforts to inform all employers of their requirements under the standard constitute the largest single information-dissemination and training program the agency has ever had. In fact, during OSHA's recent public hearing on the HCS (December 6, 1988), the Small Business Administration praised the agency's efforts to disseminate information about the standard to small employers. OSHA launched this effort within a very short period of time, in response to the sixty-day deadline for a final standard imposed by the Federal appeals court.

OSHA used a variety of means to inform employers of their responsibilities under the standard. The agency developed special publications and training programs, issued announcements through the general and trade press, and provided direct assistance to employers from OSHA's field staff. Specifically, OSHA:

- Distributed almost 300,000 copies of the "Chemical Hazard Communication" pamphlet which describes the requirements of the standard simply and clearly.

- Issued and publicized in the press the availability of the "Hazard Communication Compliance Kit," which outlines the HCS and provides employers simple steps for complying with the standard. The Kit was designed in the form of a looseleaf notebook, making it easily usable for small business employers, and is available from the Government Printing Office for a reasonable charge of $18.

- Published guidelines for employer compliance in the Federal Register of August 8, 1988, and took steps to print the guidelines as a separate publication and publicize their availability.

- Distributed to more than 3,800 suburban newspapers--many of which are used by small business employers for their own advertising--a series of six brief news features on HCS, covering topics such as labeling, MSDS's, and written hazard communication plans.

- Provided direct information on the HCS to numerous small business trade associations, local chambers of commerce, and other service clubs as part of an extensive schedule of speeches, seminars, and personal appearances by OSHA officials.

- Established Hazard Communication Coordinators in each of OSHA's ten regional offices to respond to public inquiries about the HCS and provide assistance at workshops and other meetings on the standard. The Coordinators have already responded to hundreds of inquiries concerning the HCS.

As part of its outreach effort, the agency has increased the emphasis on hazard communication under its on-site consultation program. This program, funded largely by Federal OSHA, provides requesting employers with free advice and compliance assistance from State consultants. Requests for consultation visits from small businesses receive priority attention. Of the 21,850 employers who received consultation assistance in fiscal year 1988, more than 81 percent had fewer than 150 employees. In that same year, more than 16,000 employers received advice on the HCS as part of their consultation visits.

The States which operate their own OSHA-approved occupational safety and health programs also have initiated programs to inform employers of their hazard communication responsibilities. For example: Maryland has distributed 2,000 copies of a model hazard communication training program for the construction industry; New Mexico mailed a special bulletin on hazard communication to 33,000 employers in the State; and Michigan distributed more than 50,000 information packets on the State's hazard communication requirements.

OSHA has begun or is planning a number of new or expanded outreach efforts to inform small businesses of the HCS and to assist them in complying with the standard. These activities are described in our response to Question 7. We welcome advice from the Subcommittee on other feasible means to increase awareness of the standard in the small business community.

Question 2. This standard has been referred to as the "Right-to-Know" Standard and yet it has been brought to our attention that OSHA has not sent any information concerning the Standard to small business non-manufacturers. If this is true, and considering that this Standard affects the health and safety of employees and impacts nearly every small business in the country, how can the Standard be truly effective if small businesses are not informed? How are you planning to send information concerning this Standard to small businesses?

Response

As noted in our response to Question 1, OSHA's hazard communication information program has been the most extensive in the agency's history. Many of the tools used in this effort--special publications, training programs, press announcements, and direct assistance to employers--have been successfully employed by the agency in the past for new regulations that affect small businesses. OSHA believes that its expanded use of these and other techniques for the HCS are proving effective in informing small employers of their requirements under the standard, and we plan to continue use of the particular techniques noted above as the principal focus of our outreach activities.

The agency's past attempts to notify employers individually have not been successful, and we do not believe this method would be feasible or effective in conveying information about the HCS. Direct mail campaigns are costly, requiring expensive printing and postage costs to distribute millions of notifications. The mailing lists upon which direct mail campaigns depend are often unreliable, with a large percentage of the mail returned to OSHA because of outdated names and addresses.

OSHA's enforcement experience indicates that the agency's ongoing outreach activities have been successful since most of the small businesses inspected by OSHA are both aware of the standard and have taken action to comply with its provisions. From May 25, 1986, when the original HCS became effective, through August 31, 1988, 53.3 percent of all Federally inspected manufacturing employers with 50 or fewer employees were found in compliance with the HCS. Although our compliance data in the non-manufacturing sector are limited, they too show a high rate of compliance with the standard by small

employers. From August 1, 1988, when OSHA began enforcement of HCS in the non-manufacturing sector through October 31, 1988, more than 80 percent of inspected non-manufacturing employers with 50 or fewer employees were in compliance. The Federal inspection experience mirrors that of the States, many of which had extended their own hazard communication standards or right-to-know laws to the non-manufacturing sector before OSHA did so. From August 1988 through October 1988, State inspectors found in compliance more than 90 percent of non-manufacturing employers with 50 or fewer workers.

Question 3. The Environmental Protection Agency has an office that deals specifically with small businesses and their problems in trying to comply with that Agency's regulations. Does OSHA have a similar office? (If not, does OSHA intend to provide such an office for small businesses in the near future?)

Response

OSHA does not have an office dealing specifically with small business compliance issues, nor do we believe one is warranted. OSHA finds it can more efficiently provide direct assistance to employers at the local level through its system of 87 Federal field offices which are located throughout the country and through the offices of the 23 States and jurisdictions which operate their own OSHA-approved occupational safety and health programs covering the private sector.

Unlike the Environmental Protection Agency which administers a vast array of complex laws and regulations covering many environmental matters, OSHA enforces one law with a single purpose--the protection of employees. OSHA's field staff are aware of all aspects of the agency's requirements and are able to render expert compliance advice to employers upon request. Because OSHA's field office personnel also have information about local conditions, this advice can be tailored to the particular conditions in the employer's region. The States with approved State plans also provide expert compliance assistance adapted to the conditions of small employers within their jurisdictions.

OSHA offices provide a wide range of informational and educational services to employers, such as publications, films, slides, videotapes, records and other kinds of training materials. Each OSHA office also serves as a local information clearinghouse, referring employers to other safety and health resources in the area such as trade associations, unions, State consultants, and local universities with expertise in hazard recognition and abatement.

Question 4. Considering the scope and magnitude of this Standard, is there a toll free number for small businesses to call when they have questions? (If your answer is no, why not?)

Response

OSHA has not established a nationwide toll-free number for hazard communication issues, nor do we believe one is needed. As noted in our response to Question 3, employers have ready access to expert assistance on the HCS and other standards from any of OSHA's field offices located throughout the Nation. Moreover, OSHA has designated Hazard Communication Coordinators in each of the agency's ten regional office to provide the most up-to-date policy guidance on the standard. Employers may contact the Coordinator directly, or may rely on their local OSHA field offices to consult with the Coordinator. Moreover, a centralized information source, such as a toll-free number, could not provide information on State-plan hazard communication standards and right-to-know laws. While the State laws and regulations have the same objectives as the Federal HCS, their provisions are not always identical.

Question 5. You have expressed that OSHA has various programs to educate small businesses about complying with this Standard.

a) Does OSHA maintain records on how many small businesses have actually utilized these programs? (If so, can you give us the approximate number?)

b) Has OSHA evaluated the effectiveness of these programs? For example, did OSHA do a pilot test of its "Compliance Kit" to determine if it would be useful to small businesses?

Response

OSHA does not maintain records about the size of employers who receive general assistance regarding the HCS, such as compliance advice from OSHA field offices, publications, training materials, and presentations by OSHA officials at meetings and conferences. Nonetheless, since the vast majority of employers are small, we are confident that many small businesses have benefitted from OSHA's extensive assistance and information efforts.

OSHA has not conducted formal evaluations of its outreach efforts specifically regarding the HCS in small business. The expanded standard has been in effect only since August 1, 1988; so we do not have enough enforcement experience with the rule to allow us to quantify the effects of our outreach efforts for small employers in the non-manufacturing sector. As noted in response to Question 2, our limited inspection data indicates

that our HCS outreach activities have been successful since most inspected small employers in the non-manufacturing sector have been in compliance with the standard.

OSHA regularly evaluates the quality of State consultation programs, including in its assessments special attention to the States' efforts to inform employers of their hazard communication responsibilities and their attention to requests for assistance from small employers. In fiscal year 1988, more than 81 percent of the businesses served by OSHA's on-site consultation program had fewer than 150 employees. Of the approximately 21,850 employers who received consultation assistance in fiscal year 1988, over 16,000 were provided with compliance advice on the HCS.

Because of OSHA's desire to provide information to employers as quickly as possible, the Hazard Communication Compliance Kit was not pilot tested. Instead, OSHA worked with the Small Business Administration, the Commerce Department, and the Office of Management and Budget to ensure that the Kit would meet the needs of small business employers.

Question 6. Please explain in detail what the "on-site consultation program" entails in assisting small businesses in trying to comply with the Standard. Does it entail explaining the purpose and use of material safety data sheets? Does it also entail explaining how to train employees?

a) Please explain why so many small businesses are not aware of this program?

Response

OSHA's on-site consultation program provides free advice and assistance to employers seeking to comply with the Occupational Safety and Health Act. This nationwide program is funded largely by OSHA and is operated by the States. Requests for consultation from small business employers, especially those in high-hazard industries, receive priority consideration. Consultation services are tailored to the specific request of an employer, ranging from limited advice on how to comply with a specific standard, to extensive assistance on establishing an overall workplace safety and health program.

Consultants routinely advise employers about the requirements of the HCS and explain the standard's individual provisions, including those regarding material safety data sheets and training. During fiscal year 1988, hazard communication was one of the most frequently discussed standards during consultation visits. Since 23 of the States operate OSHA-approved State plans with their own hazard communication standards or right-to-know laws, consultants provide advice that is tailored to the specific requirements of the jurisdiction in which the employer's business is located.

OSHA believes that most employers are aware of the availability of the on-site consultation Program which has been in operation since 1975. Since that time, OSHA-funded consultants have reached nearly 300,000 employers. More than 1.5 million hazards, including 617,000 serious hazards, have been addressed by the program. The States undertake their own promotional efforts, such as advertising the availability of the service in trade journals, participating in meetings of local Chambers of Commerce, and in some cases visiting individual employers to inform them of the program. Federal OSHA Compliance Officers notify employers of the availability of consultation assistance as part of every workplace inspection.

Question 7. It was evident from the testimony that more programs were needed to help educate small businesses on how to comply with this Standard. Do you foresee OSHA initiating any new programs to help educate small businesses?

Response

OSHA has begun or is planning a number of new or expanded efforts to inform small business employers about their obligations under the HCS. We are working with the Small Business Administration (SBA) to use that agency's outreach programs in achieving wider dissemination of information about the standard in the small business community. We plan to have SBA include information about the HCS in its agency newsletter, which is distributed to all SBA personnel and thousands of individual small business subscribers. OSHA also is providing each SBA district office with copies of OSHA publications on the standard, such as its "Chemical Hazard Communication" pamphlet and the Non-Mandatory Guidelines, for distribution to small employers.

OSHA is developing a list of training materials and sources of information on hazard communication that are available from various governmental and private sources. We will publicize the availability of this list through news releases and local office outreach efforts, and we will ask SBA to inform small businesses through its sources. OSHA also will provide to trade publications and general news sources, camera-ready articles on the successful efforts of employers, including small businesses, to comply with the standard.

As employers become better aware of their requirements under HCS, OSHA expects an increase in the number of requests for presentations by agency officials at meetings and seminars from professional, civic, trade and labor agencies. We also are prepared to respond to additional requests for OSHA publications and other forms of assistance. OSHA will begin to provide bulk copies of its publications on hazard communication to employer and employee groups for distribution to their individual members.

Question 8. What efforts has OSHA made to make sure that manufacturers are aware of their responsibilities to non-manufacturers as far as providing non-manufacturers with the information they need to be in compliance with this Standard? For example, manufacturers have to provide material safety data sheets and labels to non-manufacturers.

a) Are there any special enforcement procedures to make sure that manufacturers have provided non-manufacturers with the information that they need to be in compliance?

Response

Chemical manufacturers and importers have long known of their responsibility to provide hazard information about the chemicals they ship to "downstream" employers. Since November 1985, after a two-year phase-in period, chemical manufacturers and importers have been required to label all containers of hazardous chemicals leaving their workplaces and provide MSDS's for shipments to their customers in the manufacturing sector. By September 1987, when OSHA expanded the HCS to require MSDS's for shipments to non-manufacturing customers as well, the process had become routinized, so that most chemical manufacturers and importers did not have to make significant changes in their operating procedures to meet the standard's new requirements. Since many states already required employers in non-manufacturing to have hazard communication programs prior to the time when OSHA expanded the HCS, many suppliers to such industries have also provided MSDS's routinely.

OSHA believes that most chemical manufacturers and importers have responded to demands from their customers for MSDS's and properly labeled containers. We expect these market forces to increase as non-manufacturing users of chemical products become better aware of their responsibilities to provide information to employees.

OSHA checks for compliance with the HCS on every safety and health inspection. During inspections of chemical manufacturers and importers, OSHA makes certain that labeled containers and MSDS's are supplied to their customers, and issues citations for failure to do so. During inspections of downstream users, if OSHA finds that the employer does not have MSDS's or properly labeled containers, the employer is cited and given a thirty day period to obtain the required information from the supplier. No citations are issued to employers who can document a good faith effort to obtain the information. (A copy of a letter or record of a phone call to the manufacturer or supplier are accepted methods of establishing a good-faith effort.) At the end of thirty days, if the employer has not received the requested information, OSHA contacts the manufacturer or importer, by phone and certified letter, requesting

the needed information. In addition, regardless of whether an inspection is conducted, if an employer notifies OSHA that he has tried to obtain information and been unable to obtain it, the agency will follow the same process in order to acquire the MSDS for the employer. If the supplier or manufacturer fails to respond within a reasonable period of time, the case is referred for inspection to the OSHA Area Office where the supplier is located. Since September 1987, 22 manufacturers, importers or distributors have been cited for failing to ensure that employers are provided MSDS's.

Question 9. Small businesses have stated that there are additional costs in implementing this Standard in the small business community.

a) What factors did OSHA consider when it originally estimated the cost of implementing this Standard?

b) Did OSHA consider the cost for small businesses?

c) As a result of the testimony, would OSHA be willing to revise its cost estimates?

Response

When OSHA developed its expanded HCS, the agency conducted a detailed Regulatory Impact Analysis, as required by Executive Order 12291. A copy of the analysis is attached. In our analysis we recognized that costs would arise from five broad aspects of the rule: requirement for written hazard communication programs, labeling, provision of MSDS's, maintenance of MSDS's, and employee training. OSHA estimated the costs of these provisions for four different size groups of employers (1-19, 20-99, 100-249, and 250+ employees). The costs were based on factors such as: the average number of hazardous chemical products used in each size category, the average number of employees exposed to toxic substances, the average employee turn-over rates for the industries surveyed, the average number of containers used, the time needed to prepare and deliver training, and time needed to receive and file an MSDS.

In its analysis, OSHA took steps to ensure that its cost estimate would not be inflated by attributing to the Federal HCS those costs that are due to compliance with preexisting Federal and State standards. For example, we reduced the overall HCS cost estimate by subtracting the cost of hazard communication requirements already imposed by the States, arriving at an estimated net additional cost for extending the HCS to non-manufacturers. Approximately half of all employees were protected by a State rule. The analysis included assessment of the costs of each provision, so that differences

in requirements between an individual State rule and the Federal standard were taken into account. Similarly, OSHA's economic analysis took into consideration the costs of existing Federal standards which already require employers to convey hazard information on toxic substances, such as the requirement for employee training in the construction industry (29 CFR 1926.21(b)). The assessment of benefits also deducted the benefits attributable to pre-existing State and Federal requirements.

As noted above, OSHA considered the costs of the expanded HCS for four different size categories of employers, covering small, medium and large firms. OSHA specifically recognized and incorporated into its cost models factors which reflected the absence of economy of scale when fewer than the average number of hazardous products are present in the workplace, as is the case for most small business employers. The rule was found to be economically feasible for every industry in every size category. Furthermore, implementation of the standard will result in benefits that exceed those costs.

OSHA does not believe that its estimate of the costs of the standard should be changed as a result of information provided during testimony before the Subcommittee. In developing the expanded standard, OSHA carefully considered various alternative cost assumptions, all of which led to the conclusion that the standard is feasible for the non-manufacturing sector. Most information presented by witnesses at the Subcommittee hearing was based largely on anecdotal worst-case assumptions which we believe are not representative of the experience of most small businesses. Other cost data presented by witnesses failed to account for the fact that OSHA has exempted or limited coverage of certain types of hazardous chemicals such as those in sealed containers and most office products.

Cost estimates presented by the Small Business Administration (SBA) were based on assumptions that were at odds with OSHA's analysis and which, in our view, do not correspond to actual conditions in small enterprises or accurately reflect the requirements of the standard. For example, SBA overestimated the number of MSDS's small businesses would be required to maintain and ignored the savings to small businesses that would result from their use of generic employee training programs and written hazard communication programs. Even if OSHA were to accept the assumptions made by SBA in its analysis, the rule would still be feasible in every industry for every size of employer.

Question 10. Did OSHA consider any other alternatives to the material safety data sheets as a means of disseminating information about chemicals?

a) If yes, what were the alternatives and why were they rejected?

b) Did OSHA ever consider generic material safety data sheets as an alternative?

Response

In its HCS rulemaking, OSHA considered the use of labels alone as an alternative to a requirement for both labels and MSDS's to provide hazard information to employees and employers. However, information received during the rulemaking convinced the agency that exclusive reliance on labels would not provide for an effective hazard communication program. The label and the MSDS serve different purposes under the rule. The label provides an immediate visual warning. It reminds workers of the more detailed information available on the MSDS and through training. Effective communication is enhanced by repeating the information in different forms.

As revealed in the HCS rulemaking, MSDS's have long been considered an effective vehicle for conveying detailed hazard information about chemical products. Many participants in OSHA's HCS rulemaking expressed the view that properly completed MSDS's are an excellent means of transmitting hazard information about a product, such as its chemical and physical properties and health effects. OSHA agreed with commentors that the inclusion of such detailed information on labels would make them unwieldy and so difficult to read and understand that their value in providing immediate warning information would be diminished. OSHA also was concerned that damage by weather and rough handling could render the label information incomprehensible and therefore useless for transmitting hazard information.

The HCS is a performance standard, allowing employers to choose the most suitable method for compliance. The standard provides that MSDS's may be kept in any form (e.g., computerized access or microfiche versions) and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. In keeping with this performance approach, employers may use generic MSDS's as long as they contain the necessary information required by the standard. For example, employers may use generic or sample MSDS's prepared by trade associations for products commonly used in an industry, as long as the MSDS contains the information required by the standard in an accurate and understandable manner.

Question 11. Some small businesses have stated that they are confused about the definition of what constitutes an "articles" exemption? Please clarify this.

Response

The HCS does not apply to articles. An article is defined in the standard as a manufactured item: (1) Which is formed to a specific shape or design during manufacture, (2) which has end use functions dependent in whole or in part upon its shape or design during end use, and (3) which does not release, or otherwise result in exposure to a hazardous chemical, under normal conditions of use.

The key to the definition of an "article," and thus its exemption from the standard, is the term, "under normal conditions of use." For example, a manufactured item which is hazardous only if burned is exempt from the standard as an article if burning is not considered a normal condition of use for the item. However, metal ingots that will be melted under normal conditions of use, thereby releasing hazardous fumes, would not be considered articles. Fabric treated with formaldehyde to which "downstream" garment manufacturing workers are exposed when making clothing is another example of a product that is not exempt from the standard as an article.

Question 12. Please state, in detail, what must be included in the written hazard communication program.

Response

An employer's written hazard communication program must include provisions for container labeling, collection and availability of material safety data sheets, and an employee training program. The program also must contain a list of hazardous chemicals in each work area, the means employers will use to inform employees of non-routine tasks, such as the cleaning of reactor vessels, and the hazards associated with chemicals in unlabeled pipes. At construction sites and other multi-employer worksites, employers must ensure that information regarding hazards and protective measures is made available to other employers on site.

As a performance standard, the HCS allows employers to develop written hazard communication programs in a way that is best suited to the circumstances at the individual worksite. The written program does not have to be lengthy or complicated. In many cases, employers may be able to rely on generic programs available from trade associations or commercial sources.

Question 13. Did OSHA ever consider modifying the Standard to take into consideration the differences among the various types of small businesses?

Response

OSHA has not considered modifying the standard to provide varying levels of protection for employees in different industries and size groups. The purpose of the HCS is to ensure that all employees are provided information on the identities and hazards of the chemicals they work with, as well as the associated protective measures. We believe this objective is best served by a uniform Federal standard, since the hazards of chemical exposure are the same wherever they are found, and the best means to inform employees of these hazards--labels, MSDS's and employee training--are equally applicable to workplaces in all industries and size groups.

In developing the standard, OSHA carefully considered the economic impact of the rule on the small business sector, as described in the response to Question 9. Our economic analysis concluded that the standard was feasible for businesses of all sizes.

Question 14. What kinds of products and substances would the Standard cover, for example, in a small restaurant, hardware store, florist shop, or auto garage?

Response

It is not possible to provide an exhaustive list of the substances covered by the HCS in a particular industry since this would depend on the exact nature of the work being performed and the number and kinds of chemicals or substances used at an individual worksite. Many workplaces in the listed industries routinely use cleaning solvents, pesticides, paints, and de-greasing agents that would be covered by the standard if they have been determined to be hazardous by the manufacturer or distributor. Evidence of this determination would be a hazard warning label affixed to the container by the manufacturer or importer and an MSDS sent along with the product.

Question 15. How long does OSHA believe will be needed for a majority of small business non-manufacturers to be in full compliance with the Standard?

Response

OSHA believes that small businesses in the non-manufacturing sector have had sufficient time to comply with the standard, and our limited inspection experience to date indicates that

most have done so. Since August 1987, when the expanded HCS was issued, chemical manufacturers and importers have known of the requirement, effective on September 23, 1987, to provide their non-manufacturing customers with MSDS's. In many cases, these materials had been distributed to non-manufacturing employers long before that date, either voluntarily or under preexisting State standards or laws. Federal inspections of the standard in the non-manufacturing sector did not begin until August 1, 1988, thereby affording non-manufacturing employers one year from the time the standard was issued to meet the HCS requirements. As noted in our response to Question 2, during the first three months that the standard was in effect, more than 80 percent of small non-manufacturing employers inspected by Federal OSHA were found in compliance with the HCS.

Question 16. Why didn't OSHA "phase-in" this Standard, gradually, over a number of years, so that compliance would have been easier for small businesses?

a) What, if any, would have been the legal and policy problems with such a "phase-in" approach?

Response

OSHA did not phase in the HCS for non-manufacturing employers principally because the agency was concerned about its response to a court decision which expressed a great sense of urgency regarding the expanded rule. On May 29, 1987, the U.S. Court of Appeals for the Third Circuit ordered OSHA, within 60 days, either to issue an expanded HCS applicable to all workers or a statement as to why such a standard was not feasible. In its decision, the Court declared that during rulemaking on the original HCS, adequate notice had been provided to non-manufacturing employers that they might be covered by the standard. OSHA interpreted the court's sense of urgency in requiring a decision within 60 days to mean that the agency should make the standard fully effective as quickly as possible.

OSHA's decision to implement the standard without a long phase-in period was supported by the fact that the agency had no evidence to indicate that small employers could not comply with the standard within a relatively short period of time. Since the chemical hazard information for labels and MSDS's had already been generated in the manufacturing sector, and in many cases had been distributed to non-manufacturing employers voluntarily or under State laws and regulations, OSHA believed that the regulations provided sufficient time for non-manufacturing employers to comply with the standard.

Question 17. What are the major problems that large and small businesses have experienced in trying to comply with the standard? Do these problems differ in degree or kind between large and small businesses?

Response

One measure of employer problems in complying with the HCS is the number of times an individual provision of the standard has been cited by OSHA during workplace inspections. In fiscal year 1988 the three most frequently cited provisions of the HCS were the requirements for:

- Developing and implementing a written hazard communication program (29 CFR 1910.1200 (e)(1);
- Providing employees with training and information on hazardous chemicals at the time of initial assignment to work and whenever a new hazard is introduced into their work area (29 CFR 1910.1200(h)); and
- The requirement for manufacturers and importers to develop MSDS's, and for employers to have an MSDS for each hazardous chemical which they use (29 CFR 1910.1200 (g)(1)).

OSHA inspections also have found frequent violations of the standard's requirement to ensure that each container of hazardous chemicals is labeled or marked with the identity of the chemical inside (1910.1200 (f)(4)(i)), and the provision which requires labels to contain appropriate hazard warnings (29 CFR 1910.1200 (f)(4)(ii).

It has been the agency's past experience the kinds of violations found of OSHA's standards have not differed significantly according to the size of the establishment. Thus, we would not expect that the problems in complying with the HCS would differ significantly between large and small businesses. This position is supported by OSHA's compliance data (described in the response to Question 18) which shows that the rate of compliance in the small business sector does not differ significantly from the overall compliance rate in the manufacturing sector. OSHA expects that this will also be the case in non-manufacturing workplaces.

Question 18. The original Standard, promulgated in 1983, covered employees exposed to hazardous chemicals in the manufacturing sector.

a) What percentage of employers in the manufacturing sector are now in full compliance with the Standard?

b) What percentage of small employers in the manufacturing sector are now in full compliance?

Response

From May 25, 1986, when the Federal HCS became effective in the manufacturing sector, through August 31, 1988, 59.6% of all employers in the manufacturing sector inspected by Federal OSHA were found in compliance with the HCS. During the same period, 53.3% of all Federally inspected manufacturing employers with 50 or fewer employees were in compliance.

Question 19. In the written Statement to this Subcommittee, OSHA stated that "(o)ur conclusion that the standard is feasible is amply supported by the experiences of the State-plan States which covered non-manufacturing sectors prior to promulgation of the expanded Federal standard. Enforcement data indicate that a large percentage of inspected employers were found to be in compliance in those states, a clear indication that the requirements are feasible."

a) Could you please discuss and provide for us the data regarding the extent to which employers have complied with the State plans?

b) Please discuss the most important differences between the various State Plans and the OSHA Standard.

Response

The experience of three state OSHA programs which enforced their HCS in the non-manufacturing sector before the Federal standard was expanded is illustrative in estimating whether employers can comply with the expanded Federal rule. Enforcement data from Minnesota, during the period January 1984 through July 1988, indicate a compliance rate of 86% for all employers in the non-manufacturing sector who were inspected by the State. Tennessee reported that 68% of all employers in the non-manufacturing sector were in compliance with its expanded rule from October 1987 through June 1988. In Maryland, during the period April 1987 through March 1988, 78% of employers were in compliance.

The majority of the 25 States or jurisdictions which operate their own OSHA programs, have adopted hazard communication requirements which are similar or identical to the Federal rule. Only five States (California, Maryland, Minnesota, Oregon, Washington) have adopted an HCS which is different in some respects from the Federal standard. Section 18(c)(2) of the Occupational Safety and Health Act (OSH Act) requires State occupational safety and health standards to be "at least as effective" as Federal regulations. To meet the "at least as effective" criterion, the States' standards must provide the same basic protections as the Federal HCS. Moreover, because the OSH Act also stipulates that State standards which differ from Federal standards must be required by "compelling local conditions and not pose a burden on interstate commerce," the States have, for the most part, adopted provisions consonant with the Federal Hazard Communication Standard. After the current Federal HCS rulemaking is complete, the agency will perform an in-depth analysis and comparison of those State standards which are not identical to the Federal rule.

Question 20. OSHA has stated that "(a) 'hazard' is an intrinsic property of a chemical, and where there is potential for exposure to that chemical, there is always a potential risk of experiencing adverse health effects." 53 Fed. Reg. 29822, 29841 (1988).

a) Did OSHA take into account risk and practicality in determining when employees need hazard information?

b) Does OSHA require detailed hazard information for everything in the workplace regardless of the risks or the degree of danger?

c) Are employers and employees permitted to distinguish between the high risk chemical hazards from the low risk hazards?

d) Did OSHA take into account de minimis or trivial risks to employees?

Response

The HCS is based on the premise that workers are entitled to know about all the risks of hazardous substances to which they are exposed. Thus, in developing the standard, OSHA did not consider risk as an appropriate factor for limiting the amount of hazard information provided to employees. The standard's definition of hazardous chemical is intentionally broad to ensure that all potential safety and health hazards are considered by manufacturers and importers at the time a chemical is being evaluated. Since chemical manufacturers and importers cannot know whether downstream uses of a chemical will result in a significant risk to exposed employees, they must provide thorough information on all hazards to all of their customers.

The standard requires employers to have labeled containers and MSDS's for any hazardous chemical present in the workplace. Hazardous chemicals are defined as those for which there is statistically significant evidence of an adverse health effect, based on at least one positive study conducted in accordance with established scientific principles or evidence that the chemical poses a physical hazard, such as flammability. If a substance poses a trivial or de minimis risk, this determination would be revealed in these scientific studies and would be noted on the MSDS. Employers may distinguish between high and low risk chemicals, based on the degree of exposure to employees at the workplace, as part of their employee training activities.

Concerns about practicality and the potential degree of exposure were addressed in the scope and application of the HCS. For example, employers who only handle chemicals in sealed containers have limited duties under the standard. Similarly, food, drugs, and cosmetics packaged for sale to consumers in a retail establishment are exempt.

Question 21. Has OSHA made any efforts to determine whether, as a result of the Standard, health and safety risks in the workplace have declined?

a) As a result of the Standard, is there now too little or too much hazard information being disseminated in the work place?

b) If OSHA has made such a determination, does OSHA intend to incorporate the results of that determination into the Standard itself?

Response

It is too early to assess the effect of the standard in reducing the incidence and risk of chemical source illnesses and injuries, as the HCS has been in effect only since May 1986 in the manufacturing sector and has been enforced only since August 1988 in non-manufacturing workplaces. OSHA established the standard on the basis of a full and impartial public rulemaking which showed that the information required by the HCS is necessary to ensure that employers and employees know about the hazards and how to protect themselves, and that the standard is feasible, as indicated by the relatively high rate of employer compliance with its provisions. A study conducted by the University of Michigan's School of Public Health in January 1988 found that workers in five plants, operated by the Ford Motor Company, benefitted from a hazard communication program sponsored by management and the United Auto Workers. The program was found to have expanded the amount of information available to workers, and the employees found it useful.

Question 22. Please list the names of the Advisory Committees during the rulemaking process of the expanded Standard. Please also list the names of the individual members of the Advisory Committees, their occupations, and with whom they were associated.

Response

Attached are the membership rosters of the National Advisory Committee on Occupational Safety and Health and the Advisory Committee on Construction Safety and Health at the time the HCS was being considered for expansion. The lists contain the names and addresses of the members as well as the organizations with which they are affiliated.

U. S. Department of Labor

ROSTER
THE NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH
CHAIRPERSON - JOYCE C. HEARN

PUBLIC

Dr. Ernest M. Dixon (11-88) (HHS)
6305 Evermay Drive
McLean, Virginia 22101
(703)556-0296

Joyce C. Hearn (11-89)
Representative
South Carolina Legislature
1300 Berkeley Road
Columbia, South Carolina 29205
(803) 256-7255
(803) 734-3013

Robert B. Taylor (11-88)
Director, Division of Occupational Safety and Health
Tennessee Department of Labor
Nashville, Tennessee 37219
(615) 741-2793

Robert Spear (11-88) (HHS)
University of California
School of Public Health
320 Warren Hall
Berkeley, California 94720
(415) 642-1681 (415) 642-0761

NIOSH Contact:

Karen Deasy
(202) 472-7134

OSHA Contact:

Tom Hall (202) 523-8615
Dallas R. Sweezy (202) 523-6027

MANAGEMENT

Joseph L. Holtshouser (11-88)
153 W. Garwood Drive
Tallmadge, Ohio 44278-1945
(216)796-4531
(216) 633-1844

Thomas F. Evans (11-89)
Director, Environmental Safety & Health
Monsanto Company
12959 Woodlark Lane
St. Louis, Missouri 63131
(314) 694-8888

LABOR

John J. Donlon (11-88)
Special Representative
Colorado Building & Construction Trades Council
1313 Tremont Place, Suite 250
Denver, Colorado 80204
(303) 820-2282 (303) 596-5116

Margaret M. Seminario (11-89)
Asscociate Director, Department of Occupational Safety, Health and Social Security
American Federation of Labor and Congress of Industrial Organizations
815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202)637-5366

SAFETY

B. Gawain Bonner (11-89)
Route 3, Box 458
Huntsville, Texas 77340
(409) 594-3804

Jon Keith Parish (11-88)
Director of Loss Control and Training
Lane Company, Inc.
P.O. Box 151
Altavista, Virginia 24517
(804) 369-5641

HEALTH

Dr. Marcus M. Key (11-89) (HHS)
Professor of Occupational Medicine
School of Public Health
The University of Texas
Health Science Center Room M-424
P.O. Box 20186
Houston, Texas 77225
(713) 792-7450

Gerri G. Kilburn (11-89) (HHS)
Program Director
American Lung Association of Los Angeles County
5058 Wilshire Boulevard - Suite 300
P.O. Box 36926
Los Angeles, California 90036
(213) 935-5864

U.S. DEPARTMENT OF LABOR

ROSTER
ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
U.S. Department of Labor
CHAIRMAN - Major General Wesley E. Peel (Ret)

EMPLOYEE

Joe A. Adam, Director
Department of Safety & Health
United Association of Journeymen
and Apprentices of the Plumbing
and Pipe Fitting Industry
901 Massachusetts Avenue, N.W.
Washington, D.C. 20001
(202) 628-5823

Robert E.P. Cooney
3570 West 146th Street
Cleveland, Ohio 44111
(216) 671-7694

Jim L. Lapping
Director of Safety
Building & Construction Trades
Department, AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006
(202) 347-1461

Joseph L. Durst, Jr. Director
Occupational Safety & Health
United Brotherhood of Carpenters
and Joiners of America
101 Constitution Ave., N.W.
Washington, D.C. 20001
(202) 546-6202

George E. Smith, Director
Safety Department
International Brotherhood
of Electrical Workers
1125 15th Street, N.W.
Washington, D.C. 20005

EMPLOYER

V. Sherwood Kelly
1222 Merit Drive
Suite 1660
Dallas, Texas 75251
(214) 702-9004

James Pakenham
Safety Manager
Ebasco
210 Clay Avenue
Lynhurst, New Jersey 07071
(201) 460-5919

Thomas J. Reynolds
711 South Jackson Blv.
Chesterton, Indiana 46304
H-(219) 926-3074
W-(219)932-5036

John A. Ward, Jr.
Watco Corporation
P.O. Box 26716
Raleigh, North Carolina 27611
(919) 772-7191

Larry L. Swanda
Vice President
Jensen Construction Co.
5550 N.E. 22nd Street
Des Moines, Iowa 50313
(307) 266-5173

STATE

Edgar L. McGowan
5067 Hillside Road
Columbia, South Carolina 29206
(803) 734-9594
(803) 787-2677

Allen Meier
Commissioner of Labor
State of Iowa
1000 E. Grand
Des Moines, Iowa 50319
(515) 281-3606

FEDERAL

VACANT

PUBLIC

Major General Wesley E. Peel (Ret.)
2807 Barwick Circle
Bryan, Texas 77802
(409) 845-5028

Leonard E. Dodson
12899 Camino Romillette
San Diego, California 92128
(619) 485-7749

Committee Management Contact:

Tom Hall
(202) 523-8615

Theresa Berry
(202) 523-8615

Dallas R. Sweezy (Rob)
(202) 523-6027